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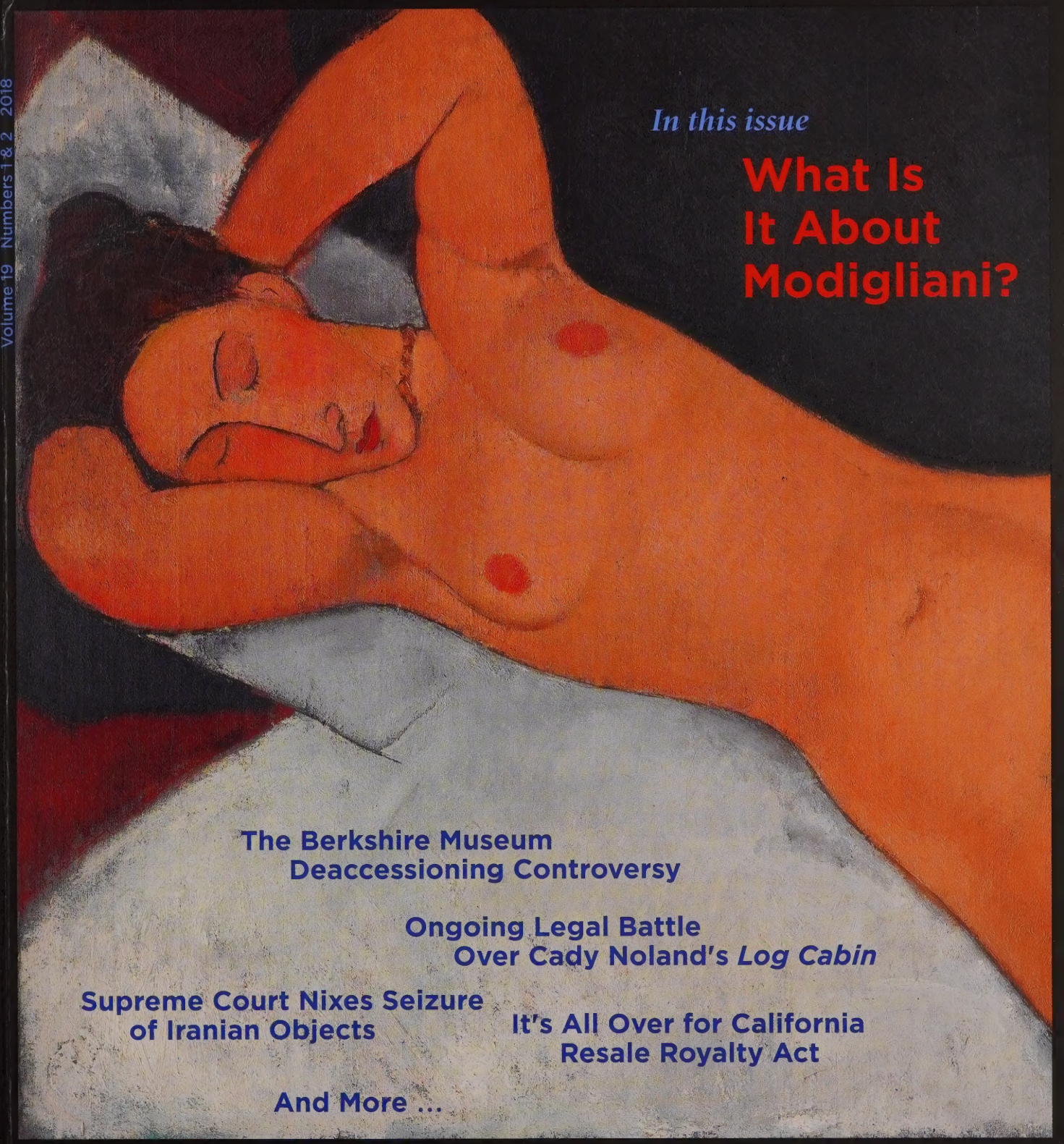

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COVER: Amedeo Modigliani, *Nude*, 1917. Oil on canvas, 73 x 116.7 cm (28 ¾″ x 45 ⅞″). Founding collection, by gift 41.535. Solomon R. Guggenheim Museum, New York. Ph. SRGM/ Art Resource, NY. Image cropped. See article on p. 26.

U.S. SUPREME COURT NIXES SEIZURE OF IRANIAN ART OBJECTS

FAMILIES OF TERROR VICTIMS LEFT WITH LITTLE RECOURSE

In a circuitous series of events, culminating in thirteen years of litigation in U.S. courts, the fate of Iranian-owned art objects housed at the University of Chicago's Oriental Institute ("the Institute") was finally solidified by the U.S. Supreme Court in February.[1] In a unanimous decision on February 21st, the Court said that the collection of approximately 30,000 clay tablets and fragments **(FIGS. 1-3),** on long-term loan to the Institute since 1937, will stay in Chicago; it cannot be used as payment to the families of terrorism victims for a judgment against Iran.

FIGURE 1. A sealed, uninscribed Persepolis Fortification tablet. The Aramaic inscription on the seal gives the name and title of its owner (c. 500 BC). Courtesy of the Oriental Institute of the University of Chicago.

THE BACKSTORY

To know what led to this decision, we have to go back to September 1997, when three suicide bombs detonated in a crowded pedestrian mall in Jerusalem, killing five people and injuring another two hundred. Some were Americans. The terrorist attack was planned and executed by Hamas. Back home in the United States, surviving victims and the families of those killed sought justice. They viewed Iran as a viable guilty party, which, by lending material support to Hamas, could take partial blame for the deaths and injuries. Yet there was a legal hurdle: the U.S. Foreign Sovereign Immunities Act.

The Foreign Sovereign Immunities Act ("FSIA") makes it difficult for citizens of the United States to sue foreign governments.[2] But there are exceptions. The 2008 National Defense Authorization Act ("NDAA") opened the door for victims of terrorist attacks to file lawsuits by providing a cause of action against foreign state sponsors of terrorism under 28 U.S.C.

FIGURE 2. An Elamite document recording beer issued as travel rations at waystations on the road between Susa and Persepolis. The stamp seal on the reverse belonged to the recipient, a son-in-law of the king (c. 500 BC). Courtesy of the Oriental Institute of the University of Chicago.

[1] *Rubin v. Islamic Republic of Iran,* 138 S. Ct. 816 (2018).

[2] *See generally* 28 U.S.C. §§ 1602- 1607. The FSIA was enacted in 1976 and amended in 2008.

§ 1605A. It was under this exception to the FSIA that the American victims of the 1997 suicide bombings filed their claim—and won a sizeable judgment—against Iran in 2003.[3]

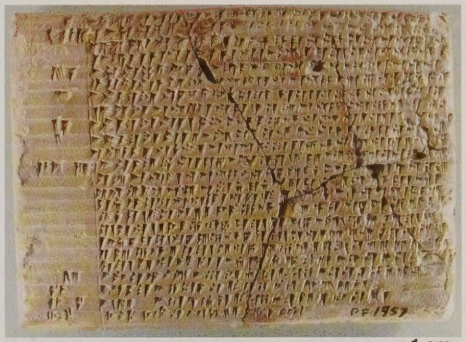
Iran did not show up in court, and the District Court for the District of Colombia granted the plaintiffs/victims a combined default judgment award of $71.5 million.[4] Winning the judgment was one thing, but enforcing it was another.

Unsurprisingly, Iran didn't pay the judgment, and herein lays the critical matter that ended up before the Supreme Court of the United States: under what circumstances can property owned by Iran, yet physically held in the United States, be attached and executed on as fulfillment of a judgment awarded under the terrorism exception to foreign sovereign immunity? In other words, can Iranian artifacts held by the University of Chicago's Oriental Institute be subject to seizure and attachment in fulfillment of such a judgment?

Just as a foreign sovereign is typically immune from suit, its property held within the United States is typically immune from seizure and attachment in fulfillment of a U.S. judgment, barring a proper exception. When Congress passed the National Defense Authorization Act in 2008, it intended to make it easier for victims of terrorist attacks to file claims and fulfill judgments against terrorist-supporting foreign governments. But did that mean *all* foreign property within the U.S. is available for attachment under *any* circumstance?

Upon recognizing that Iran would not pay the default award, the plaintiffs sought numerous avenues for fulfilling the judgment using Iranian assets in the U.S. One such collection of assets was the Persepolis Collection held by the Oriental Institute. The Collection arrived in the U.S. in 1937, when Iran lent it to the Institute for research, cataloguing, and translation. The approximately 30,000 clay tablets and fragments are all part of a single set of administrative records dealing with the management of stores of food in a region around Persepolis and date to c. 500 BC.[5] They have been on long-term loan and cared for by the Institute since they arrived. The parties did not dispute the ownership of the Collection: Iran holds title.

So under what circumstances could this collection of assets, owned by Iran yet present in the U.S., be seized and executed on by the plaintiffs in fulfillment of their judgment? Section 1610(a) of the U.S. Code provides an exception to immunity when property is "used for a commercial activity in the United States."



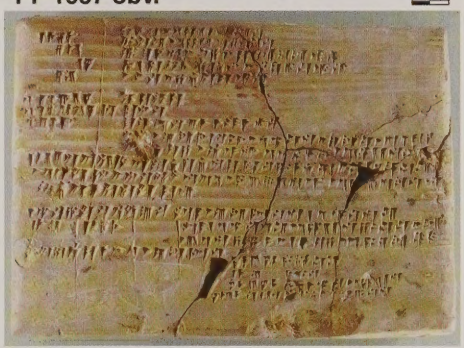


FIGURE 3. A serial list of outlays of grain for religious rituals, rations, fodder, etc. at a district storehouse (c. 500 BC). Courtesy of the Oriental Institute of the University of Chicago.

3 *Campuzano v. Islamic Republic of Iran*, 281 F. Supp. 2d 258 (D.D.C. 2003).

4 It is important to note for the relevant statutory interpretation in this case, that the plaintiffs originally received their 2003 default judgment under 28 U.S.C. § 1605(a)(7), which was replaced by §1605A as part of the National Defense Authorization Act of 2008. Prior to filing this suit in 2014, the plaintiffs converted their judgment to one under §1605A.

5 IFAR would like to thank University of Chicago Professor Matthew W. Stolper (Professor of Assyriology, John A. Wilson Professor of Oriental Studies in the Oriental Institute) for providing this information, and for help obtaining the photographs.

But the parties disagreed over a key point: who needs to perform the "commercial activity," the sovereign (Iran), or its third party intermediary (the Institute)?

"The Persepolis Collection arrived in the U.S. in 1937, when Iran lent it to the Oriental Institute for research, cataloguing, and translation. … The parties do not dispute the ownership of the Collection: Iran holds title."

Iran argued, and both the district and appellate courts agreed, that the commercial activity exception only applies to the commercial activity of the sovereign itself, not to that of its agents or intermediaries. Thus, while the Institute is the physical possessor and caretaker of the Iranian property, its commercial activity in the United States does not satisfy the requirement necessary for the §1610(a) immunity exception to apply. Because Iran itself was not engaged in commercial activity in the U.S. involving the Persepolis Collection, §1610(a) could not provide an avenue for the plaintiffs to attach and execute on the Collection.

THE LEGAL ISSUE

The lower courts grappled with the commercial activity question, as well as a question involving the Terrorism Risk Insurance Act. All outcomes were in favor of the defendant, Iran. The Supreme Court granted certiorari (appellate review) in 2017 to untangle the third issue: the interpretation of §1610(g) **(FIG. 4).** This section of the statute was enacted by Congress in 2008 as part of the National Defense Authorization Act, meant to make it easier for victims of state-sponsored terrorism to enforce judgments awarded under §1605A. The issue for the Supreme Court was narrow: does this section provide a freestanding exception for plaintiffs awarded judgments under §1605A to attach and execute on assets *regardless* of the other requirements of §1610?

The Supreme Court's answer was a resounding no; a close reading of §1610(g) shows that the phrasing "as provided in this section" means the desired property must fit the requirements of an earlier part of §1610, which the courts determined it did not. The plaintiffs argued, to no avail, that this section of the statute provides a freestanding and independent "terrorism exception" to execute on the artifacts. While the parties agreed this section was meant to ease fulfillment of judgments for terrorism victims, the defendants contended, and the Supreme Court agreed, that §1610(g) does not create a freestanding exception to the other requirements detailed in §1610. While §1610(g) helps identify property that *could* be available for attachment and execution in satisfaction of a §1605A judgment, it does not *alone* abrogate immunity from seizure.

Given the difficulty in suing a foreign government—and the odds against winning—it is

Relevant Statutes

§1605A: Terrorism exception to jurisdictional immunity of a foreign state

§1610(g): Exception to immunity from attachment or execution for a §1605A action

FIGURE 4. A description of the two statutes at issue in the case.

understandably upsetting to see judgments go unfulfilled, especially those against state-sponsors of terrorism. Parties who hold a judgment against a state-sponsor of terrorism may execute it on foreign assets in the United States only under certain limited circumstances, and now, according to the Supreme Court's February ruling, the Iranian art objects held by the University of Chicago's Oriental Institute are not such assets. The National Defense Authorization Act of 2008 may have provided more clarity for terrorism victims, but it did not eliminate immunity from seizure for *all* foreign sovereign property in the U.S. under *all* circumstances. The assets must still fulfill the requirements of a separate provision of §1610. In short, Iran's Persepolis Collection remains in Chicago for now, and the families of the terrorism victims cannot use the Collection to fulfill their judgment against Iran.

—**ANDREA GUMUSHIAN**
Legal Intern, IFAR

and **SHARON FLESCHER**
Executive Director

• • •

A NEW TWIST ON CADY NOLAND'S *LOG CABIN* SUIT

What started out as VARA and copyright infringement lawsuit by American conceptual artist Cady Noland, whose reputation for litigiousness has spread to two continents, has unexpectedly morphed into a new debate over what constitutes "art."

As previously discussed in *IFAR Journal* (Vol. 18, nos. 2&3 (2017)), Noland filed suit against the Berlin-based Michael Janssen Gallery and others in July 2017,[1] arguing that by performing unauthorized conservation work on her 1990 sculpture *Log Cabin* **(FIG. 1)**, they had infringed on her copyrights and violated her rights under both the Visual Artists Rights Act (VARA) and the New York Artists' Authorship Rights Act (AARA).

Rather than directly attack Noland's allegations, however, Janssen argued, in a March 2018 motion to dismiss, that the gallery had not violated Noland's copyright in *Log Cabin* because the work *itself* was not copyrightable.

First, Janssen noted that the U.S. Copyright Office had denied Noland's registration for copyright in the work entirely. While Janssen conceded that Noland's use of a generic, manufactured object to produce *Log Cabin* served as "artistic commentary," only a "*particular expression* of an idea, never the idea itself," he argued, "is entitled to copyright protection." Here, Noland used logs created by a commercial log cabin manufacturer to create the façade of a

FIGURE 1. Cady Noland. *Log Cabin,* 1990. Wooden logs and other wood components, American flags, metal rings, and paper construction plans. 141 ¾″ x 218″ x 31 ½″.

[1] *Noland v. Galerie Michael Janssen, et al.*, No. 1:17-cv-05452 (S.D.N.Y. *amended compl.* May 29, 2018).

classic log cabin and, according to the gallery, simply added American flags. Such a work, Janssen argues, does not satisfy the "standard of originality" necessary to receive a copyright.

As copyright protection is a prerequisite for VARA protection, Janssen argued that Noland had no claim under VARA either.[2] Nor did she have a claim under the New York AARA, as that law was passed in 1983 and was preempted by the passage of VARA in 1990. Moreover, the work was never exhibited in New York, a requirement of the AARA.

In response to Janssen's motion to dismiss, Noland requested (and was granted) permission to amend her original complaint. The amended complaint, filed in May 2018, is quite different from its predecessor. First, the claim that Janssen violated New York's AARA has been dropped altogether. More significantly, the new complaint seems to hedge its bets on the copyrightability of *Log Cabin* under U.S. law, as it now accuses Janssen of violating the U.S. Copyright Act "*and/or* the German Copyright Act" as well as VARA "*and/or* the German Copyright Act."

On July 8, 2018 Janssen responded to the amended complaint with a new motion to dismiss. In addition to reiterating that *Log Cabin* is not sufficiently original to be copyrightable under U.S. copyright law, Janssen asserts that Noland's work is not copyrightable under German copyright law either, as it "fails to meet the minimum threshold of originality" required. Further, Noland's claim would be time-barred by Germany's three-year statute of limitations for copyright infringement claims.

Janssen also uses Noland's emphasis on Germany in the amended complaint against her.

He notes that because, by Noland's own admission, the infringement of her work occurred entirely in Germany, Noland is barred from asserting her claims in the *United States*, as American courts do not have "jurisdiction over alleged infringements of United States copyright laws [solely occurring] abroad." Lastly, as the defendants and key witnesses reside in Germany, and the claim arose there, Janssen argues that the U.S. court should dismiss the case on forum non conveniens grounds, as a German court would be the more convenient location for the case.

– NICHOLAS DIETZ
Legal Research Associate, IFAR

and **S.F.**

[2] As discussed in our 2017 article, VARA might not apply to *Log Cabin* in any event because the work was sold in November 1990 and VARA did not come into effect until June 1991.

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LETTERS TO THE EDITOR

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UPON FURTHER REVIEW, JUDGE IN *5POINTZ* CASE AGREES WITH HIMSELF

On June 13, Federal Judge Frederic Block issued a new ruling in *Cohen v. G&M Realty*[1] better known as the "5Pointz case,"[2] which was covered at length in the last issue of the *IFAR Journal* (Vol. 18, no. 4). In February 2018, Judge Block, of the District Court for the Eastern District of New York, had ruled that real estate developer Gerald Wolkoff had violated the Visual Artists Rights Act (VARA) by "willfully" destroying 45 works of graffiti art of "recognized stature" without giving the artists the required 90 days notice. Wolkoff was ordered to pay a total of $6.75 million in restitution to the artists.

In brief, for roughly 20 years, Wolkoff had allowed graffiti artists to spray paint their works of "aerosol art" on a building complex he owned in Long Island City, Queens, New York. Jonathan Cohen, one of the graffiti artists, served as "curator" of the space, which would later become known as "5Pointz" and grow into a tourist attraction **(FIG. 1).** All involved knew that Wolkoff would eventually destroy the complex, along with the artwork. Nevertheless, when Wolkoff announced his plans to tear down the buildings in 2013, Cohen and the other artists took him to court in an unsuccessful attempt to obtain an injunction on the grounds that their artworks were protected by the VARA statute and thus could not be destroyed. They went on to sue Wolkoff for the destruction and, as noted above, were successful In February 2018.

Instead of simply appealing the decision, however, Wolkoff filed post-trial motions with the district court, essentially requesting that Judge Block overturn his own decision. Wolkoff argued, among other things, that Block's conclusion that the works were of recognized stature was improper because he had relied solely on assessments made *after* they were destroyed. Wolkoff also asserted that the court's award of VARA's *maximum* statutory damages of $150,000 per destroyed work (totaling $6.75 million) was unconstitutionally excessive, contending that – if Wolkoff were ultimately held liable – the damage award should be no more than the statutory minimum of $750 per work (totaling $33,750).

Not surprisingly, in his June 13 decision, Judge Block denied the motions to overturn his earlier decision. However, he did take the opportunity to clarify and expand upon his initial ruling, noting that, "since the case has generated a considerable amount of public interest and is bound for the circuit court of appeals, the public and the appellate court should have the fullest explication of the bases for my decision."[3]

FIGURE 1. 5Pointz as it appeared prior to November 2013, when a real estate developer whitewashed the building. Photo: Esmosis (Wikipedia).

The 89-page June ruling contained a significant revelation regarding Block's refusal to grant the temporary injunction the artists sought in November 2013; namely, that Block's decision had been based on statements made by Wolkoff – later proven false – that if the complex was not demolished by December 2013, he would lose hundreds of millions of dollars

1 *Cohen v. G&M Realty,* No. 13-cv-05612 (E.D.N.Y. June 13, 2018).

2 The "5 Pointz Case" began as two cases filed by separate groups of graffiti artists (*Cohen v. G&M Realty* and *Castillo v. G&M Realty*), consolidated and heard together under the name *Cohen v. G&M Realty.*

3 *Cohen,* p. 3.

in tax exemptions and benefits. It was only during the ensuing trial that Block learned Wolkoff risked no such losses. Had he known this earlier, Block states categorically: "I would have issued a different decision: *I would have granted the injunction until such time that the buildings were demolished.*"[4] (Judge Block's emphasis.)

This is especially important because at trial Wolkoff asserted that by not issuing the injunction, Block had essentially granted him permission to destroy the artworks and, as such, Wolkoff's actions could not be classified as *willful* wrongdoing.

Regarding the issue of whether the artwork at 5Pointz was of recognized stature – a prerequisite for artworks on buildings to receive VARA protection – Wolkoff asserted that VARA would only apply if there was evidence that each work was recognized *prior* to its destruction, but the artists' experts were testifying 4 years *after* the works were destroyed. Nevertheless, Judge Block found their testimony to be sufficient evidence of recognized stature.

One of the expert witnesses was Jonathan Cohen himself, despite the fact that 7 of the works he was testifying about were his own. Rather than see a possible conflict of interest in his testimony, Judge Block stated that he "found [Cohen's] credibility as a witness to be *unimpeachable*,"[5] which, in legal parlance, is akin to declaring that there was nothing Wolkoff could present that would cause Block to doubt Cohen's testimony.

Block's opinion of Wolkoff's testimony, on the other hand, was far different. As in his February 2018 decision, Block's June 13 ruling criticizes Wolkoff's conduct both inside and outside the courtroom. Suggesting the reasons he imposed what Wolkoff deemed an "excessive" penalty, Block stated:

> "I had observed his demeanor on the witness stand and his persistent refusal to directly answer the questions posed to him by me and under cross-examination. I did not believe him. Moreover, it simply stuck in my craw that I was misled that the demolition of the buildings was imminent … I was appalled at this conscious material misrepresentation."[6]

Lastly, in response to Wolkoff's criticism that Block's February 2018 ruling did not sufficiently explain how he had determined that each of the 45 works satisfied VARA's recognized stature requirement, Block devoted the final two-thirds of his June 2018 decision (roughly 60 pages) to doing just that. Yet many of Block's explanations are mere conclusory statements – e.g., "It was seen by millions of commuters on the passing train" – often applied to several different works.

Interestingly, before Wolkoff even filed his post-trial motions with Block, he had already filed a notice of his intent to appeal Block's February 2018 decision to the U.S. Court of Appeals for the Second Circuit. But it was only after Block issued his June 2018 ruling that the Second Circuit directed Wolkoff to submit his appellate brief, giving him a deadline of September 21, 2018.

—N.D.

4 *Cohen*, p. 13.

5 *Id.*, p. 23.

6 *Id.*, p. 14.

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BEWARE OF GREEKS REQUESTING HORSES

DEMAND LETTER HALTS SALE OF BRONZE HORSE

On May 11, 2018, three days before a highly publicized New York auction **(FIG. 1),** Sotheby's received an "urgent" letter by email from the Greek Ministry of Culture demanding the immediate withdrawal and repatriation of Lot No. 4: a bronze *Figure of a Horse* **(FIG. 2).** The letter claimed that the sculpture, dating to ca. 8th century BC, was illegally removed from Greece decades ago, in violation of Greek patrimony laws and international agreements. It threatened legal action if Sotheby's did not comply.

The May 14th auction, "The Shape of Beauty: Sculpture from the Collection of Howard and Saretta Barnet," comprised twenty-nine objects from around the world—African, Oceanic, Pre-Columbian, American Indian, Classical, and Near Eastern—collected over an almost fifty-year period by the deceased couple, who were prominent collectors.[1] The Horse had a pre-sale estimate of $150,000-200,000 and graced the catalogue cover. Upon receipt of the "demand letter," Sotheby's removed the Bronze Horse from the auction. On May 16th, Sotheby's sent a response, asking for evidence backing up the Greek Ministry's assertion. There was no answer. The Barnet family and Sotheby's then filed an action on June 5th seeking declaratory relief.[2] The complaint asks the court to find that the Barnet family—not Greece—is the rightful owner of the Bronze Horse; that Greece cannot seek repatriation; and that Sotheby's may legitimately sell the Horse at auction. Meanwhile, the sculpture is being held by the auction house in New York pending resolution of the ownership dispute.

FIGURE 1. Catalogue cover, Sotheby's New York auction, May 14, 2018.

In its "demand letter," the Ministry of Culture asserted that the sculpture is Greek cultural property, illegally stolen from Greece. It threatened to pursue criminal prosecutions against any U.S. person involved in its sale.[3] It presented no evidence as to where or when the Bronze Horse was first discovered, or that it was involved in illegal activity, citing only that there was no evidence in Greek archives that permission for its export had ever been granted, and that it had been purchased by the Barnets in 1973 from the now-disgraced (but formerly prominent) London antiquities dealer, Robin Symes.

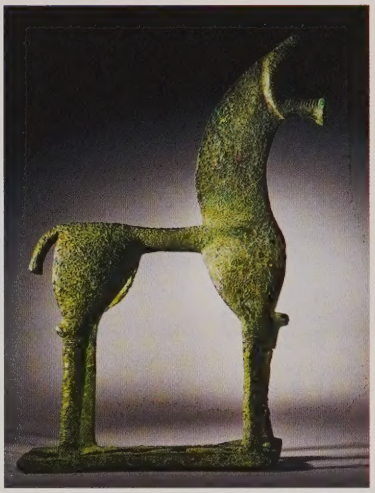
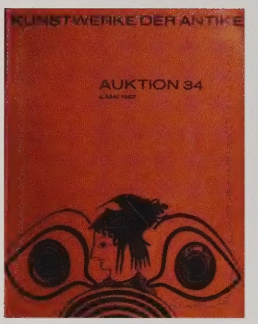


FIGURE 2. Lot No. 4: ***Figure of a Horse.*** Greek, Geometric Period, ca. 8th century BC. Bronze. 5 ½". Photo: Sotheby's.

1 The Barnets' collection of drawings was sold in a special sale at Sotheby's, New York on January 31, 2018.

2 *Barnet et al. v. Ministry of Culture & Sports of the Hellenic Republic,* No. 18-cv-4963 (S.D.N.Y. filed June 5, 2018).

3 *Id.* at 6.



FIGURES 3A & **B. A (left)** Catalogue cover for the Munzen und Medaillen auction, Basel, Switzerland, May 1967; **B (right)** Catalogue, p. 4, Lot No. 2, the Bronze Horse.

Sotheby's had conducted pre-sale provenance research on the Horse, which found that the sculpture was included in a May 6, 1967 Munzen und Medaillen public auction in Basel, Switzerland **(FIG. 3 A & B).** The 1967 auction catalogue does not name the consignor; nor is the purchaser, if it was not Symes himself, known at this time.

Greece suggests that, because it has no record of the Bronze Horse leaving that country legally, it means, ipso facto, that the sculpture was illegally exported, but that is not how the Barnet complaint interprets it.[4] The Greek Ministry also cited the 1970 UNESCO Convention (signed by Greece in 1981; implemented by the U.S. under the CPIA in 1983), and also a 2011 Memorandum of Understanding between Greece and the U.S., as evidence that the Horse is in the U.S. illegally, but it is difficult to see how these two international agreements apply to this sculpture, which according to its documented provenance, left Greece before they went into force. Neither agreement is retroactive.

Peter Barnet, a plaintiff in the June 5th complaint, along with his brother and sister and Sotheby's, told IFAR: "Our parents were passionate collectors who spent decades assembling an extensive and varied collection. Every object that entered their collection, including this ancient bronze sculpture, was bought in good faith."[5]

As *IFAR Journal* went to press, the Ministry had yet to reply to either the auction house's May 16th email or to the June 5th complaint. A pre-trial conference is scheduled for September 14, 2018 in the Southern District of New York.

—**A. G.** and **S. F.**

[4] *Id.* at 8.

[5] Peter Barnet, a medieval art specialist and Curator Emeritus at the Metropolitan Museum of Art, is a member of IFAR's Art Advisory Council.

• • •

IT'S NOT OVER FOR GETTY BRONZE DESPITE THIRD ITALIAN COURT RULING

June 8, 2018 marked the third time that a judge in the Italian town of Pesaro on Italy's Adriatic Coast ordered the J. Paul Getty Museum to return to Italy a life-sized bronze statue of an athlete held by the Museum since 1977 **(FIG. 1).** The statue, widely-known as the "Getty Bronze," was discovered by Italian fisherman in international waters in 1964, and its ownership has been disputed in and out of Italian courts for more than a decade.

The statue itself is Greek, a rare extant example of a life-size Hellenistic bronze (c. 300-100 BC). It shows a "Victorious Youth" crowning himself with an olive wreath. When found in 1964, the statue was heavily encrusted **(FIG. 2),** and corroded by saltwater, indicating that it had been submerged probably for millennia, presumably as the result of a shipwreck while being transported from Greece to Italy. Upon discovery, the work was brought briefly to Italy by the fisherman, hidden, sold to middlemen, and sent clandestinely out of the country.

In the 1970s, Italian courts determined that, having been found in international waters, the statue was not part of Italy's patrimony. The issue was revived years later. In 2010, Pesaro Court Judge Lorena Mussoni ruled that an illegally smuggled work was subject to confiscation even if its current possessor (the Getty) had played no role in the smuggling. The Getty appealed to Italy's highest court, the Court of Cassation, which sent the case back to the Pesaro Court to hear additional evidence.

In 2012, a different Pesaro judge, Maurizio Di Palma, also ruled that the work should be returned to Italy, holding that because it was found by Italian fisherman operating an Italian vessel, it was Italian property and the Getty had not adequately investigated the work's provenance before acquiring it.

The Getty appealed the case again and, in 2015, Italy's Constitutional Court struck down the Pesaro court's ruling because it had not followed Italian strictures that cases involving the confiscation of property must be heard in "open court proceedings," which permit the calling of witnesses.

The case was then sent back down to Pesaro where yet another judge, Giacomo Gasparini, ruled this June that the Bronze belonged to Italy and ordered its return. In the latest ruling, Gasparini did not simply declare the work to be Italian property because it was discovered by Italians aboard an Italian boat, but stated – despite evidence and prior rulings to the contrary – that the Bronze had in fact been discovered in Italian territorial waters.

The Getty, which has been firm in its assertion of ownership and did not repatriate this work along with 40 other works it did agree to return to Italy in 2007, has stated its intent to appeal once again.

—N.D. and **S.F.**

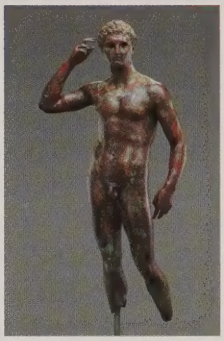


FIGURE 1. ***Statue of a Victorious Youth*** (Greek, 300-100 B.C.). Bronze with inlaid copper. (59 ⅝" x 27 9/16" x 11"). Inv. no. 77.AB.30. Coll. J. Paul Getty Museum.

FIGURE 2. *Statue of a Victorious Youth* pre-conservation. Ph. J. Paul Getty Museum.

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In Brief—

Guelph Case Can Proceed in U.S.

As IFAR was going to press, in July, the U.S. Court of Appeals for the D.C. Circuit partially affirmed a lower court's decision allowing the heirs of a consortium of German-Jewish art dealers to proceed with their lawsuit to recover a collection of medieval German relics known as the Guelph Treasure.[1] The heirs allege that the works, currently held by the German state-run Prussian Cultural Heritage Foundation (*Stiftung Preussischer Kulturbesitz* or "SPK"), were sold under duress by the consortium to Nazi officials in 1935.[2]

The lower court ruled in March 2017 that the Foreign Sovereign Immunity Act (FSIA), which restricts lawsuits against foreign governments and agencies, did not protect Germany and the SPK from suit because forced sales occurring in the context of genocide fall within the "expropriation exception" to the FSIA. Germany and the SPK appealed. In its July 2018 ruling, the appeals court affirms that decision in part, holding that the heirs can proceed against the SPK, but not against Germany.

The appeals court noted that the expropriation exception requires a showing of "an adequate commercial nexus" between the defendant and the U.S. While this had been demonstrated with regard to the SPK, it had not with respect to Germany because, in the case of foreign states, the commercial nexus requirement is only satisfied if the property at issue "is present in the United States." Since the Guelph treasure is not located in the U.S., the Court was required to dismiss Germany from the lawsuit.

The case against the SPK, however, was remanded back to the lower court for trial. At press time, the SPK had not indicated whether it will seek a rehearing.

Supreme Court Declines Review of Pissarro Claim

On May 14, the U.S. Supreme Court declined to hear a case that IFAR has been covering for years: the ownership dispute between Madrid's Thyssen-Bornemisza Foundation (and museum) and the heirs of German-Jewish art collector Lilly Cassirer Neubauer over a Pissarro painting the heirs say was taken in a forced sale in 1939. As reported in *IFAR Journal*, Volume 18, no. 1, the U.S. Court of Appeals for the Ninth Circuit issued a ruling in July 2017, reversing a lower court's grant of summary judgment in favor of the Foundation. The Ninth Circuit ruled that the case should not have been dismissed until the lower court (a federal district court in Los Angeles) had determined whether or not the founder of the Madrid-based Foundation knew the Pissarro had a tainted provenance when he purchased the work from a New York art dealer in 1976. The Foundation appealed the ruling to the Supreme Court, but now that the Court has declined to hear it (refused to issue a *writ of certiorari*), the case has been remanded to the district court, which is scheduled to hear it in December 2018.

FIGURE 1. Camille Pissarro. *Rue Saint-Honoré, après-midi, effet de pluie*, 1897. Oil on canvas. 32" x 25 ½". Claimed from the Thyssen-Bornemisza Collection, Madrid.

China Art Tariffs

Industrial goods are not the only Chinese items caught up in the U.S. trade war with China. A 25% tariff on imports of Chinese art and antiques has also been proposed. Public hearings will be held in Washington August 20-23. Asian art and antique dealers and collectors oppose the measure. The final decision will be made by the U.S. Trade Representative. Importation of *antiquities* from China has effectively been banned since 2009.

1 *Philipp v. Germany and Stiftung Preussischer Kulturbesitz*, No. 17-7064 (D.C. Cir. July 10, 2018).

2 The case was discussed at length in *IFAR Journal*, Vol. 18, no. 1 (2017).

Algeria Requests U.S. Help

The Government of Algeria has requested U.S. help in protecting its archaeological and ethnological material ranging from the prehistoric period to the Ottoman Era. Starting on July 31, the Cultural Property Advisory Committee (CPAC) will meet to consider Algeria's request for a bilateral agreement that would place U.S. import restrictions on designated types of Algerian heritage considered at-risk of pillage, pursuant to the 1970 UNESCO Convention and the 1983 U.S. Cultural Property Implementation Act. Algeria has been a party to the Convention since 1974. During the same meetings, CPAC will also consider whether to recommend the renewal of the current agreements with Bulgaria and Honduras, which expire, respectively, in January and March of 2019.

BREAKING NEWS
Cranachs Can Stay at the Norton Simon

As *IFAR Journal* was at the printer, a Ninth Circuit appeals court in California ruled unanimously in favor of the Norton Simon Museum in a complicated Holocaust-related ownership dispute we've followed since 2008. On July 30, the court said that the *Adam* & *Eve* panels, claimed by the heir of their pre-WWII owner, were acquired legally by the museum. More details in the next *Journal*.

• • •

CHOOSING WRONG "LADY LIBERTY" COSTS POSTAL SERVICE $3.5 MILLION

The most expensive stamps in the world tend to be those that display some type of flaw or error. As the U.S. Postal Service (USPS) learned to its detriment in June 2018, stamps with copyright blunders can prove costly as well.

In December 2010, the Postal Service released a "Lady Liberty" stamp featuring a close-up image of the face of the Statue of Liberty **(FIG. 1).** Unfortunately, the image that was used did not depict the world-famous copper statue that stands in New York Harbor, but rather a plaster replica created by sculptor Robert Davidson in 1996 for the "New York-New York Hotel & Casino" in Las Vegas, as part of a faux New York skyline.

The mistake just cost the USPS $3.5 million. On June 29, the U.S. Court of Federal Claims found the Postal Service liable for copyright infringement against Davidson.[1] This is not the first time the USPS has been found liable for copyright infringement on one of its stamps. In a 2015 case, *Gaylord v. United States*, the same court found the USPS liable of the offense for using a photograph of the Korean War Memorial on a postage stamp without the sculptor's permission.[2]

The blame for the Lady Liberty mistake, however, cannot be laid entirely at the feet of the Postal Service; several parties played a role. In 2008, the USPS decided to produce a new stamp featuring an image of the Statue of Liberty and requested access to photographs of the statue in the archives of a company called PhotoAssist. Included among the many images of the "real" Statue of Liberty was a photograph of the Las Vegas Statue, taken by Raimund Linke and owned by Getty Images. It was this image that the Postal Service's "manager of stamp development" selected as the basis for its new Lady Liberty stamp.

In June 2010, the Postal Service paid Getty Images $1,500 for "a nonexclusive three-year license for Linke's photograph," and the new Lady Liberty stamps were released that December. It was not until March 18, 2011 that the USPS learned its

FIGURE 1. "Lady Liberty" postage stamp featuring Davidson's Las Vegas "Statue of Liberty." (First issued by the U.S. Postal Service in December 2010.)

1 *Davidson v. United States*, No. 13-942C (Fed. Cl. June 29, 2018).

2 *Gaylord v. United States*, No. 2014-5020 (Fed. Cir. Feb. 4, 2015).

stamp actually featured an image of the Las Vegas Statue. When the mistake became public, however, Postal Service officials publicly stated that they would have chosen the same image even if they had known it was not of the real Statue of Liberty. The USPS continued printing the Lady Liberty stamps until January 2014, generating approximately $70 million in profits.

Davidson meanwhile did not learn *his* statue was being used on a U.S. postage stamp until January of 2012. In November 2013, he obtained a copyright of the work and brought suit against the USPS for copyright infringement.

"The court rejected the USPS argument that Davidson's work lacked originality."

The USPS argued that Davidson's Las Vegas statue lacked sufficient originality to qualify for copyright protection, as it was merely a copy of the "real" Statue of liberty. Alternatively, the Postal Service argued that if the work was indeed copyrighted, its use of the image was permissible under the fair use exception.

The court rejected the USPS argument that Davidson's work lacked originality. It believed Davidson's testimony that he had designed the face of his statue to look "a little more modern, a little more contemporary [and] definitely more feminine" than New York's Statue of Liberty; it was to be something "more appropriate for Las Vegas." Davidson also testified that he used a picture of his mother-in-law as a basis for the sculpture's face.[3] In addition, the court noted that the USPS's claim that the work lacked originality was undermined by several public statements they had made while defending their selection of the work, including one stating that Davidson's work represented "a new take on a classic icon."

The court also rejected the Postal Service's "fair use" claim. The fair use exception holds that the use of a copyrighted work will not be considered infringement if certain conditions are met, e.g. the use is not commercial in nature; only a small portion of the work is used. As in the *Gaylord* case, the court ruled that the Postal Service did not qualify for the fair use exception because its use of the work – on postage stamps sold for profit – was undeniably commercial. The court also rejected the fair use claim on the grounds that the USPS had used the "critical core" of Davidson's statue: its face.

In deciding the amount of damages to award Davidson, the court attempted to follow the *Gaylord* opinion, which held that damages should equal the fair market value of a license to use the plaintiff's work. Since Gaylord's usual licensing agreements called for him to receive 10% in royalties, the court awarded him 10% of the profits made by the USPS in sales of the stamps depicting his Korean War sculpture.

Such information could not be used for Davidson, because he had never previously licensed his work. Therefore, the court based its damages award on expert testimony regarding the rates charged for "comparable art licenses" and the rates the USPS itself charged when licensing its own work, arriving at a figure of 5% of profits. As the estimated profits earned by the USPS for sales of the Lady Liberty stamps amounted to $70 million, the court awarded Davidson the sum of $3.5 million in damages.

—N.D.

[3] Interestingly, Frédéric Auguste Bartholdi, the creator of the real Statue of Liberty, based *that* statue's face on his own mother's. See Marvin Trachtenberg, *The Statue of Liberty* (London: Penguin Books Ltd, 1976).

• • •

THE CALIFORNIA RESALE ROYALTY ACT GOES OUT WITH A WHIMPER

In what may be the final nail in the coffin of the movement for artists' resale rights in the U.S., the Ninth Circuit Court of Appeals on July 6 upheld a lower court decision striking down all but a sliver of the California Resale Royalty Act (CRRA).[1] The 1977 CRRA, the only law of its kind in the United States, granted a 5% royalty to artists – and their heirs – each time one of the artists' works was resold in the State of California *or* by a California resident (regardless of where the sale took place). *Federal* resale royalty legislation—also known as *droit de suite* – has been proposed unsuccessfully in the U.S. Congress on three occasions.[2]

The CRRA remained largely ignored until a group of artists and their heirs, including Chuck Close, Robert Graham, and Laddie John Dill, filed a 2011 suit in federal court in California against Sotheby's, Christie's, and eBay, for reselling their artwork without paying the royalties required by the CRRA. The case, *Close v. Sotheby's,*[3] which IFAR has been following since its inception,[4] turned out to be a terrible mistake for the artists.

In a 2012 decision, the U.S. District Court for the Central District of California struck down the CRRA in its entirety, ruling that because it affected transactions occurring *outside* of California, it was unconstitutional under the dormant Commerce Clause. On appeal, the Ninth Circuit agreed for the most part, but held that the CCRA could still apply to resales that took place solely *within* California.

The defendants next attacked the California Act on copyright grounds and, in a 2016 decision, the district court struck it down again, ruling that as a state law, it was preempted by the "first sale doctrine" of the 1976 federal Copyright Act,[5] which gives copyright holders (in this case, the artists) control only over the initial sale of their works, not downstream sales – the very essence of *droit de suite.*

The Ninth Circuit, in its July 2018 decision, largely agreed with the lower court – but paid special attention to the specific dates that the CRRA and 1976 Copyright Act went into effect. It noted that the California Act went into effect on January 1, 1977, whereas the federal Copyright Act – although known as the "*1976* Copyright Act" – did not enter into effect until January 1, 1978. The Court reasoned that since the CRRA predated the Copyright Act, the latter could not "preempt" the former until the date it actually came into effect, meaning that artists would be entitled to royalties from "sales that occurred between the CRRA's effective date of January 1, 1977, and the [Copyright] Act's effective date of January 1, 1978." (The predecessor Copyright Law of 1909, in effect until 1978, was silent on this issue.)

In short, while the lower court had invalidated the CRRA in its entirety, the Ninth Circuit ruled that it had initially been valid – but only for one year: 1977. The Ninth Circuit remanded the case back to the lower court to resolve any claims the artists might have based on transactions that occurred in 1977.

Theodore Feder, President of the Artists Rights Society, which represents artists, told IFAR that, while he finds much of the Ninth Circuit decision "faulty," he "agrees with the Court that this is a reform that is most appropriately addressed on the national level."

—S.F.

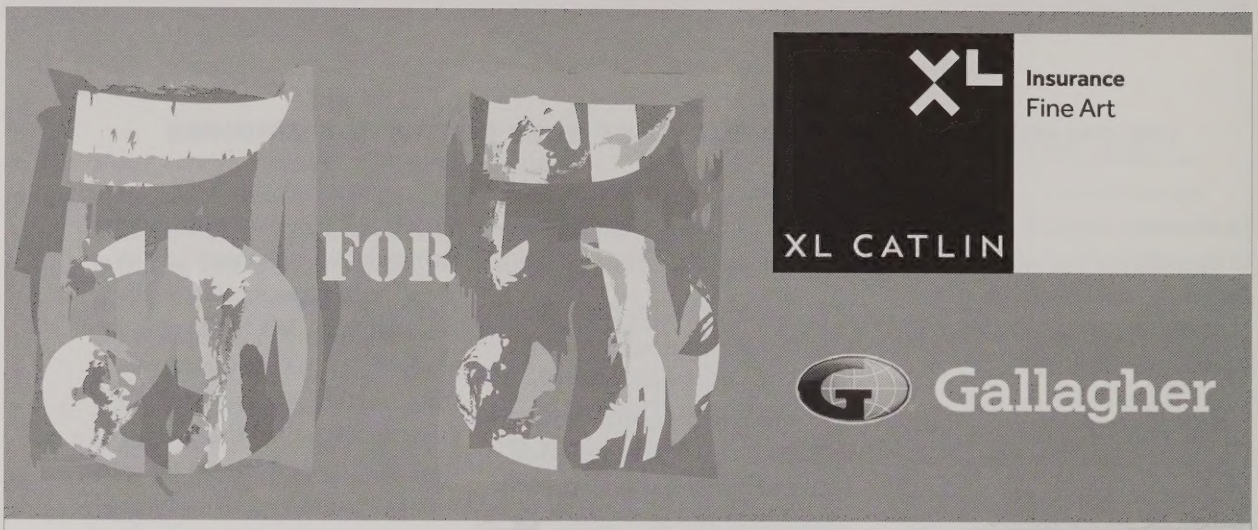
1 Cal. Civil Code § 986.

2 In 2011, 2014 and 2015. There may be a fourth, as IFAR has been informed by aides to Congressman Jerrold Nadler (D-NY), who introduced the previous bills, that he intends at some point to reintroduce federal legislation.

3 *Close, et al. v. Sotheby's, et al.,* No. 16-56234 (9th Cir. July 6, 2018).

4 See, for example, *IFAR Journal,* Vol. 18, no. 1; Vol. 16, no. 4; and Vol. 15, nos. 3 & 4.

5 17 U.S.C. 109.



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THE BERKSHIRE MUSEUM DEACCESSIONING CONTROVERSY

SINCLAIRE DEVEREUX-MARBER*

"Faced with either closing their doors or selling works of art, many smaller museums are choosing the latter. Nevertheless, the use of these funds for operations is still strongly criticized by [professional museum] organizations ... and has been challenged in court for violations of donor intent."

The Spring 2018 auctions were notable for many things, among them the inclusion over several sales of thirteen works consigned by the Berkshire Museum to Sotheby's. Among these were paintings by William Bouguereau, Frederic Edwin Church, Charles François Daubigny, Adriaen Isenbrant, John LaFarge, Alberto Pasini, Rembrandt Peale, Frances Picabia, and Norman Rockwell, as well as an Alexander Calder sculpture and work on paper by Henry Moore. Several of the works sold within their estimates — for example, the highly anticipated Rockwell, *Shaftsbury Blacksmith Shop* (1940), went for $7 million ($8.131 million with premium), at its low estimate of $7-10 million **(FIG 1).** The two Isenbrandts were surprise standouts, both exceeding their high estimates of $200,000 **(FIG. 2).** Nevertheless, the Daubigny, two Bouguereaus, Calder, and Moore failed to reach their low estimates, and neither the Pasini nor the Church (estimated at $5–7 million) sold at auction.[1] Fortunately for the Berkshire Museum, the Pennsylvania Academy of Fine Arts subsequently bought Church's *Valley of Santa Ysabel* (1875) **(FIG. 3)** for an undisclosed sum.[2]

FIGURE 1. Norman Rockwell. ***Blacksmith's Boy – Heel and Toe (Shaftsbury Blacksmith Shop),*** 1940. Oil on canvas, 35 ⅛″ x 70 ¼″. Consigned by the Berkshire Museum to Sotheby's and sold in May 2018 for $8,131,000 (with premium; estimate $7-10 million). *Blacksmith's Boy - Heel and Toe* Illustration ©1940 SEPS. Licensed by Curtis Licensing. All Rights Reserved.

* Sinclaire Marber is a J.D./L.L.M. Candidate at Columbia Law School and the London School of Economics and a former IFAR Legal Intern, who will be starting at the firm of White & Case LLP in Fall 2018. The author would like to thank Mavis Fowler-Williams, Esq., Lecturer in Law at Columbia, for her supervision of my original research on the topic and Dr. Sharon Flescher for her thoughtful insights and editing of this article.

1 "Works from the Berkshire Museum Collection," Sotheby's, accessed June 30, 2018, http://www.sothebys.com/en/news-video/slideshows/2018/berkshire-museum-collection.html.

2 Andrew Russeth, "Berkshire Museum's Frederic Church Painting Sells to Pennsylvania Academy of the Fine Arts," *Artnews,* May 24, 2018, http://www.artnews.com/2018/05/24/berkshire-museums-frederic-church-painting-sold-pennsylvania-academy-fine-arts/.

FIGURE 2 (left). Adriaen Isenbrant. ***The Flight into Egypt.*** Oil on panel, 27 ¼″ x 33 ⅝″). One of the two Isenbrant paintings consigned by the Berkshire Museum to Sotheby's. Sold May 22, 2018 for $759,000. (Estimate $150,000-200,000.)

Prior to the Sotheby's sales, and in fulfillment of the Berkshire Museum and Massachusetts Attorney General's joint commitment to "ensure public access" to the most valuable of the deaccessioned works, Rockwell's *Shuffleton's Barbershop* (1950) **(FIG. 4),** the Lucas Museum of Narrative Art (founded by George Lucas of "Star Wars" fame and scheduled to open in 2022) bought the painting for an undisclosed sum,[3] and agreed to lend it to the Norman Rockwell Museum in Massachusetts for 18-24 months. The placement of at least two paintings in museums is heartening given the general concern that, once sold, the deaccessioned works would disappear from the public view.

FIGURE 3. Frederic Edwin Church. ***Valley of Santa Isabel, New Granada,*** 1875. Oil on canvas, 39 ¼″ x 60″. Sold by the Berkshire Museum to the Pennsylvania Academy of Fine Arts for an undisclosed amount after Sotheby's May 23, 2018 sale. (Estimate $5,000,000-7,000,000.)

American art museums have long practiced "deaccessioning," the process of selling or trading objects from a permanent collection. Since the 1970s, legal and ethical debates about the merits of deaccessioning have played out in newspapers, conferences, and courtrooms across the United States. Proceeds from deaccessioned art have traditionally been used only for future acquisitions and not for operating expenses, in accordance with the generally accepted responsibility of

3 "Summary of the February 9, 2018 Agreement with the Office of the Massachusetts Attorney General," Berkshire Museum, accessed June 30, 2018, https://berkshiremuseum.org/newvision/ago-summary/; Jori Finkel, "Lucas Museum Comes Forward as Buyer of Rockwell Painting," *New York Times*, April 11, 2018, https://nyti.ms/2GQ1TgU.

FIGURE 4. Norman Rockwell. ***Shuffleton's Barbershop,*** 1950. Oil on canvas, 33″ x 31″. Sold by the Berkshire Museum for an undisclosed amount to the Lucas Museum of Narrative Art prior to the Sotheby's May 2018 sales. (Estimate $20-30 million.) *Shuffleton's Barbershop* Illustration ©1950 SEPS. Licensed by Curtis Licensing. All Rights Reserved.

museums to keep art publicly accessible.[4] Presumably, a museum elects to remove duplicate, damaged, or "lesser" art in a good faith attempt to better achieve the institutional mission by directing resources toward more desirable objects (either by removing existing works draining resources or acquiring "better" art). These principles are codified by professional museum associations, compliance with which is often a prerequisite for certain types of funding and participation in museum loan networks.

Yet the most recent financial crisis of 2008 and ballooning operating costs have left museums in various degrees of financial hardship.[5] Simultaneously, the value of art, now part of a multi-billion-dollar international market, has increased, making the broader use of deaccessioned funds an increasingly tempting option. Faced with either closing their doors or selling works of art, many smaller museums are choosing the latter. Nevertheless, the use of these funds for operations is still strongly criticized by organizations such as the American Alliance of Museums ("AAM") and Association of Art Museum Directors ("AAMD") and has been challenged in court for violations of donor intent.

In 2017, the Berkshire Museum announced plans to deaccession artworks from its collection in order to cover mounting debt. Included in this selection were the two Rockwell paintings, which the artist had personally donated to the museum. Despite public outcry and a lawsuit from the Rockwell heirs among others, the Museum reached a settlement agreement in early 2018 with the Attorney General ("AG") of Massachusetts permitting the use of deaccession funds for operating expenses. It remains to be seen whether this controversial decision will cause more harm than good.[6] A crucial figure in the promotion of the deaccessioning plan, Executive Director of the Berkshire Museum Van Shields, has just announced that he will be stepping down.[7] And although the Spring 2018 sales at Sotheby's did well—bringing in more than $40 million—the Museum did not reach its $55 million goal. Consequently, the Museum announced on June 25, 2018 that it would be selling seven additional works privately through Sotheby's, including paintings by Albert Bierstadt **(FIG. 5),** Thomas Dewing, Thomas Moran, Benjamin West, Charles Willson Peale, and George Durrie, as well

4 As of April 2018, the Oxford English Dictionary Online credits the *New York Times* with an early use of "deaccession" in a 1972 article about the Metropolitan Museum of Art ("the Met") and the Museum of Modern Art. Scholars tend to agree it was a specific incident that sparked public debate over the practice of deaccessioning. The *New York Times* uncovered in 1972 that the Met had secretly sold at least 50 valuable works to private dealers. All of the art came from a specific donor, Adelaide de Groot, who had bequeathed her collection five years earlier with an "understanding" that any unwanted paintings would be distributed to other museums in the area and remain accessible to the public. Director Thomas Hoving vehemently denied that any clandestine sales had taken place, but the truth eventually emerged. In 1970, the Met purchased the portrait *Juan de Pareja* by Diego Velázquez for over $5.5 million, the record auction price at the time. But in order to pay for the painting, the Met used endowment funds that needed to be replenished—hence the quiet sale of the de Groot paintings. See, for example, John Henry Merryman, Stephen K. Urice, and Albert E. Elsen, *Law, Ethics and the Visual Arts* (New York: Kluwer Law International, 2007), pp. 1271–76.

5 Elizabeth Blair, "As Museums Try to Make Ends Meet, 'Deaccession' is The Art World's Dirty Word," NPR, August 11, 2014, https://www.npr.org/2014/08/11/339532879/as-museums-try-to-make-ends-meet-deaccession-is-the-art-worlds-dirty-word).

6 "Summary of the February 9, 2018 Agreement," *op. cit.*

7 "Berkshire Museum's Executive Director to Step Down," *Artforum,* June 28, 2018.

FIGURE 5. Albert Bierstadt. ***Giant Redwood Trees of California,*** c. 1874. Oil on canvas, (52 ½″ x 43″). Consigned by the Berkshire Museum for private sale by Sotheby's.

as a Calder mobile. Two additional Qing Dynasty works will be sold in September 2018 at Sotheby's Asia Week sale.[8]

Not unexpectedly, the AAMD has already issued sanctions requesting that its 243 member-museums no longer lend to or collaborate with the Berkshire Museum.[9]

A LOCAL INSTITUTION

The Berkshire Museum controversy stands out among recent deaccessioning debacles because it is a standalone institution, in contrast to those museums embedded within a college or university.[10] The Berkshire Museum primarily serves Berkshire County, specifically the city of Pittsfield, Massachusetts. Pittsfield was established in the eighteenth century and grew to become an important center for textile and paper manufacturing before facing industrial decline in the twentieth century.[11] Zenas Crane (of the Crane & Company family paper empire) founded the museum in 1903 in order to combine art, history, and the natural sciences in a single institution. As a result of this mission, the Museum has an eclectic collection including fossils, early American furniture, and valuable paintings.[12]

The two recently sold Rockwells were the most valuable paintings in the Berkshire Museum (estimated together to be worth around $30 million). The artist spent the last decades of his life in Stockbridge, Massachusetts, just 15 miles from Pittsfield.[13] Rockwell's first studio in Stockbridge was so small that he relied on Berkshire Museum Director Stuart Henry to help store completed canvases. In honor of that friendship, Rockwell donated the two oil paintings to the Museum: *Shuffleton's Barbershop* in 1958 and *Shaftsbury Blacksmith Shop* in 1966. In their lawsuit, Rockwell's sons brought into evidence a letter from

8 Larry Parnass, "Berkshire Museum Plans to Sell 9 More Works, Bringing total to 22," *Berkshire Eagle,* June 25, 2018.

9 "AAMD Statement on Sanction of Berkshire Museum and La Salle University Art Museum," Association of Art Museum Directors, May 25, 2018, https://aamd.org/for-the-media/press-release/aamd-statement-on-sanction-of-berkshire-museum-and-la-salle-university. AAMD also sanctioned the La Salle University Art Museum for "proceeds from recent art sales to support operating budgets or expansion initiatives, a decision that violates one of the core principles of art museums." Ibid. The last time AAMD issued sanctions was in 2014 for the Delaware Museum of Art. Eileen Kinsella, "Museum Directors' Association to Impose Sanctions on the Berkshire Museum and La Salle University Art Museum," *Artnet,* May 25, 2018, https://news.artnet.com/art-world/berkshire-museum-and-la-salle-university-sanctions-1292897.

10 The most recent deaccessioning controversies have occurred at the Rose Art Museum at Brandeis University, Carl Van Vechten Gallery at Fisk University, and La Salle University Art Museum. There are numerous newspaper and online articles on all three cases, but for an introduction to the topic, see Patty Gerstenblith, "Museums Face Legal Obstacles to Deaccessioning Works," *Cultural Heritage and Arts Review* 1, no. 2 (2010): 27.

11 "Pittsfield History," City of Pittsfield, accessed June 30, 2018, http://www.cityofpittsfield.org/residents/history_of_pittsfield/index.php.

12 "About," Berkshire Museum, accessed June 30 2018, https://berkshiremuseum.org/about/.

13 "A Brief Biography," Norman Rockwell Museum, accessed June 30, 2018, https://www.nrm.org/about/about-2/about-norman-rockwell/.

Henry thanking Rockwell for his gift to the "permanent" collection, arguing this indicated that a condition of the gift was that the paintings remain at the Berkshire Museum in perpetuity.[14] The court eventually determined this did not indicate any restrictions stronger than those the museum itself would apply.[15]

Today, Pittsfield is trying to reestablish itself as a regional cultural center.[16] The Berkshire Museum and its holdings by local artists are important assets to a community trying to rebuild itself through cultural innovation. Consequently, it came as a shock to many when the Museum announced plans to deaccession art in order to offset increasing financial burdens. It appears that trouble the Museum faced during the 2008 financial crisis was compounded by a recent renovation. From 2007 to 2016, the Museum's operating deficit alone has climbed to nearly $12 million.[17] Several options were considered to combat the financial problem, including: "merging with another museum … aggressive fundraising, changes in programming, increasing ticket sales, grant writing and reduced operational costs through hiring freezes, reduced hours and reduced programming."[18]

ROCKWELL V. TRUSTEES OF THE BERKSHIRE MUSEUM

By 2015, the Trustees of the Berkshire Museum turned to deaccessioning as an option and in July 2017 authorized a consignment agreement with Sotheby's. In October 2017, Rockwell's three sons joined together with residents of Pittsfield and Berkshire County to request a preliminary injunction against the Trustees to prevent the sale of *Shuffleton's* and *Shaftsbury* along with other works until the Attorney General could investigate.[19] Although they initiated the lawsuit, the Rockwell heirs (as private actors, not executors of their father's estate) were deemed to have no standing to prevent the sale of the works by virtue of the laws of nonprofit governance.[20]

Museums are governed by boards, which are generally composed of patrons responsible for general management. The requirements of these boards, however, differ based on the type of nonprofit legal entity in question. The boards of charitable trusts are composed of trustees, who are held to the higher "trustee standard" of prudence (based on ordinary negligence) in their decisions. Board members of nonprofit corporations are held to the lower "corporate director standard" (based on gross negligence) and are free to exercise their best "business judgment" under the assumption decisions made will be proper. States disagree on whether to still apply the trustee standard to museums that are nonprofit corporations; even if established as such, a court may hold a museum to the trustee standard because of the implicit charitable responsibilities of museums to the public.[21]

The decision to deaccession falls with museum trustees, whose actions are monitored by state Attorneys General responsible for ensuring museum compliance with fiduciary responsibilities. Consequently, Attorneys General are generally the only ones with standing to bring a suit, unless otherwise dictated by a written legal instrument.[22] Maura Healey, AG of Massachusetts, did not initially file her own request for an injunction, just a letter of support for the original plaintiffs. Eventually, she admitted the plaintiffs had no standing and filed a motion to convert her office to plaintiff. Healey was deemed to have standing to request a preliminary injunction in her capacity to oversee charitable organizations, but Judge John A. Agostini called

14 Memorandum in Support of Motion for Temporary Restraining Order, Rockwell v. Berkshire Museum, No. 4751504.3 (Mass. Super. Oct. 20, 2017) at 5 [hereinafter Memorandum].

15 Rockwell v. Trs. of the Berkshire Museum, No. 138825, 2017 LEXIS 208 at 42–44 (Mass. Super. Oct. 20, 2017) [hereinafter Rockwell].

16 "Pittsfield History."

17 "A Summary of the Berkshire Museum's Finances," Berkshire Museum, accessed June 30, 2018, https://berkshiremuseum.org/newvision/finances/.

18 Rockwell, 5.

19 Memorandum.

20 Rockwell, 21–22.

21 Sue Chen, "Art Deaccessions and the Limits of Fiduciary Duty," *Art & Antiquity Law* 14, no. 2 (2009): 116–19.

22 Derek Fincham, "Deaccession of Art from the Public Trust," *Art & Antiquity Law* 16, no. 2 (2011): 9.

her a "reluctant warrior," predicting that her office would not have become involved had the private plaintiffs not brought suit.[23]

THE DECISION AND SETTLEMENT

Deaccessioning is not illegal if the art in question was acquired without restrictions. Problems arise when the sale or disposition of a particular piece of art violates terms of a gift or bequest. Donor intent can become more complicated when a museum's circumstances change subsequent to a bequest (or gift whose donor is then deceased) — the majority of lawsuits surrounding deaccessioning revolve around such situations.

The primary concerns for Healey and her office requiring further investigation were whether: (1) the Museum was prohibited from selling the artwork due to restrictions in its establishment and/or by the Rockwell gift; or (2) the plan contravened the Museum's mission. In his Superior Court opinion, Judge Agostini noted that there were no deaccession prohibitions in the Museum bylaws, nor restrictions stronger than what the Museum would apply in Rockwell's *inter vivos* trust.[24] He consequently denied the injunction, concluding that "deaccessioning has become a necessary evil in the museum industry due in large part to loss of funding and economic upheaval."[25] Nevertheless, in early November 2017, the Massachusetts Appeals Court granted an injunction until December 11, 2017, believing the risk of harm to plaintiffs to outweigh that to defendants.[26] The injunction was extended until January 29, 2018.[27] This reversal may have been due to the continued public interest and community backlash surrounding the case.

On February 8, 2018, the Attorney General and Berkshire Museum announced a settlement, much to the dismay of the original plaintiffs.[28] The agreement authorized the Museum to sell just as many works as was necessary to meet its financial burden. Specifically, the Museum is free to use up to $50 million in proceeds for general operations; up to $5 million after this may be used towards general acquisitions (presumably for the science department); any net proceeds above this may be held specifically for acquisition of art. Because the Museum is capped by the agreement to sales of $55 million, it is unclear what proceeds would be directed towards art. The agreement also stipulated that the Museum may accept below-market (meaning below auction price) offers in private sales if this ensures the work can remain accessible to the public.[29]

CONCLUSION

Deaccessioning suits are generally governed by state law and depend on individual facts; consequently, any precedent set by *Rockwell v. Trustees of the Berkshire Museum* will be confined to Massachusetts. Moreover, because the case was settled before a judge could issue a post-injunction ruling based on Healey's investigation, it remains unclear just how deep courts are willing to dig to prevent deaccessioning if allowing the practice means that an institution can remain open. Meanwhile, professional organizations such as the AAMD are doubling down to chastise museums who take this path. It is too soon to tell, but there remains the possibility that sanctions could prevent such sales from proving effective, just as community backlash may also work against the sale(s). Is there is a role for professional associations to play in crafting new guidelines that would allow deaccessioning to pay for operations costs in certain circumstances? If this debacle is any indication, the best outcome for all parties is that the sold works remain accessible to the public by going to another museum.

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23 Rockwell, 21–25.

24 Rockwell, 42–44.

25 Rockwell at 29; 53–54.

26 Nicholas O'Donnell, "Appeals Court Stays Sale of Berkshire Museum Paintings," *Art Law Report,* November 10, 2017, https://blog.sandw.com/artlawreport/appeals-court-stays-sale-of-berkshire-museum-paintings.

27 O'Donnell, "Injunction Against Berkshire Museum Sale Is Extended," *Art Law Report,* December 13, 2017, https://blog.sandw.com/artlawreport.

28 O'Donnell, "Members of the Berkshire Museum Pledge to Continue Fight Against Liquidation of the Museum's Art Collection," *Art Law Report,* February 13, 2018, https://blog.sandw.com/artlawreport.

29 "Summary of the February 9, 2018 Agreement."

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WHAT IS IT ABOUT MODIGLIANI?

An *IFAR Evening*, April 24, 2018

Left to right: Kenneth Wayne, Isabelle Duvernois, Lena Stringari, Sharon Flescher, Marc Restellini.

SPEAKERS (IN SEQUENCE)

KENNETH WAYNE
Director, The Modigliani Project, New York

LENA STRINGARI
Deputy Director and Chief Conservator,
Guggenheim Museum and Foundation

ISABELLE DUVERNOIS
Conservator, Paintings Conservation Dept.,
The Metropolitan Museum of Art

MARC RESTELLINI
Founder and Director, Institut Restellini, Paris

Moderator, SHARON FLESCHER
Executive Director, IFAR

EDITOR'S NOTE/INTRODUCTION

In April 2018, a sold-out IFAR Evening audience in New York heard four noted speakers discuss the Italian artist Amedeo Modigliani (1884-1920), whose popularity has soared in recent years. Modigliani's oeuvre has been tainted by the many dubious attributions ascribed to him. Compounding the problem, there are five existing Modigliani catalogues raisonnés of varying quality and two new catalogues raisonnés in progress, under the aegis of two of IFAR's speakers, who had never before appeared on the same panel. The timing of the program was spurred by the confluence of several events: the two aforementioned catalogue raisonné projects; three Modigliani exhibitions in 2018—at the Tate in London, at the Jewish Museum in New York, and a scandalous exhibition in Genoa, Italy, which was forced to close when 20 out of 21 works by Modigliani and Kisling were seized as probable fakes (later confirmed by scientific testing); and, most importantly, the Modigliani Technical Research Study, spearheaded by the Tate in conjunction with its retrospective. Results of this international, multi-year museum initiative, whose objective was to learn more about Modigliani's working methods and materials, not to study authenticity per se, were being published in three issues of The Burlington Magazine in March, April, and May of 2018. Two of the conservators in the Study—from the Metropolitan Museum and the Guggenheim—spoke at the IFAR Evening, and others were in the audience. Below are the edited talks and the Q&A from the program.

WHAT IS IT ABOUT MODIGLIANI?

KENNETH WAYNE*

Now is indeed a very exciting time in the Modigliani field, given the Jewish Museum exhibition – "Modigliani Unmasked" – organized by Mason Klein; the exhibition in London at the Tate; the new scholarship that appeared in their respective exhibition catalogues; the formation of catalogues raisonnés; public talks like this *IFAR Evening*; and important technical studies, which are really interesting reads, especially for those of us in the field.

Modigliani has fully entered popular culture and consciousness. In France, novels, including graphic novels about him and his girlfriend Jeanne Hébuterne, have been published very recently **(FIG. 1).** One distinguished author, Laurent Seksik, who trained as a medical doctor, also wrote a play that was performed last fall in Paris **(FIG. 2).** All this has happened within the last year or so. Modigliani and his art are being featured and mentioned in movies too: Woody Allen's nostalgic fantasy *Midnight in Paris* from 2011 **(FIG. 3),** in which the Marion Cotillard figure tells the central character, played by Owen Wilson, that she just broke up with an Italian Jewish artist, and evokes this reaction: "You were dating Modigliani?!" (The movie was set in 1916.) Modigliani and James Bond have also crossed paths. In *Skyfall* from 2012 **(FIG. 4),** Modigliani's painting *Woman with Fan* of 1919 is featured as a stolen work being offered by underworld figures in Shanghai to a collector who is shot in the back of the head while evaluat-

FIGURE 1. French graphic novels about Amedeo Modigliani and Jeanne Hébuterne.

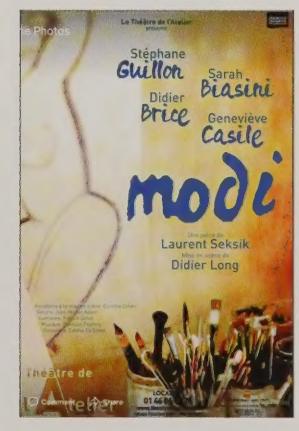
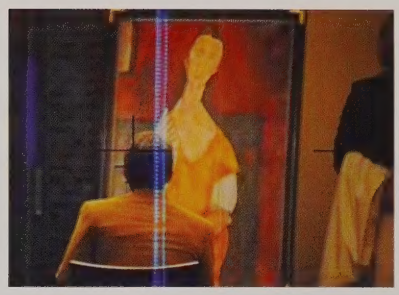


FIGURE 2. Poster for Laurent Seksik's play about Modigliani.

* Kenneth Wayne, Ph.D., is an art historian, curator, and the Founding Director and President of The Modigliani Project, a nonprofit organization that, among other things, is producing a new catalogue raisonné on Modigliani.



FIGURES 4A-C. The James Bond movie *Skyfall* featured Modigliani's painting *Woman with Fan.*

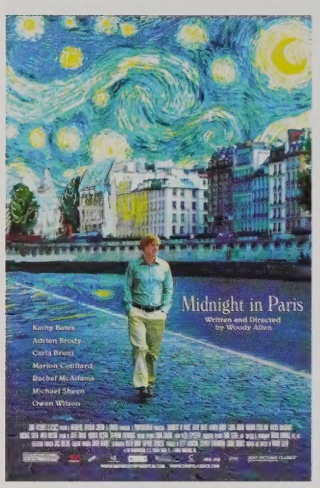


FIGURE 3. The Woody Allen film *Midnight in Paris* included a reference to Modigliani.

ing the work. This is a real painting, which was, in fact, stolen from the Musée d'Art moderne de la Ville de Paris in 2010, a couple of years before this movie. The painting remains missing today, although the thieves were caught. Who could have imagined that one of Modigliani's favorite models, Lunia Czechowska, would one day become a Bond girl!! Also worth mentioning, there is an orchestral piece on the soundtrack of the Bond film called *Modigliani.*

In the romantic comedy *Made of Honor* (2008), the female lead Hannah, adorably played by Michelle Monaghan, is a conservator at the Metropolitan Museum of Art whose favorite artist is Modigliani. And what do you know, we just happen to have here at this *IFAR Evening* a real-life conservator from the Met who is also a fan of Modigliani. Hannah's secret admirer Tom, her best friend, played by Patrick Dempsey, longs for her as she prepares to marry another man. Tom woos Hannah, getting his girl, by recalling the moment when she first became infatuated with Modigliani's art. And, finally, we have an Irish race horse named Amedeo Modigliani **(FIG. 5),** a three-year-old colt who is tearing up the tracks and gaining notoriety across the pond. Note his long neck. The owner wanted to associate his horse with excellence, success and handsomeness, therefore he chose a name that conveys that. So, Modigliani has recently inspired a novel, a play, graphic novels, Woody Allen, James Bond, and an Irish race horse. What next, I ask?

FIGURE 5. The Irish race horse named Amedeo Modigliani.

Just last year, three significant works by Modigliani **(FIG. 6)** were donated to museum collections. *La belle espagnole,* which was donated to the Rivoli Museum in Turin (the Museo d'Arte Contemporanea), would have been painted in Nice in the south of France. Modigliani was partly influenced by Matisse, who was in residence there, an influence evident in the patterning of the dress and the wallpaper behind. *Woman in a Sailor Shirt,* which was in a private collection in Venice for decades, was given to the Guggenheim in Venice. The third donation was a major sculpture given to the Kimbell Art Museum in Fort Worth. To have three major donations like this given to museums in one year is pretty extraordinary. That's almost 1% of Modigliani's total *oeuvre.*

Just this morning (April 24, 2018), there was major breaking news in the Modigliani field. Sotheby's

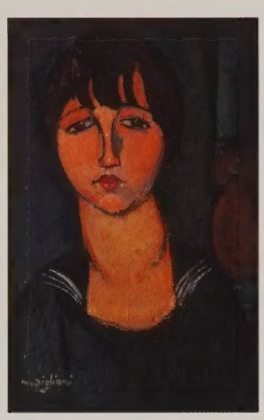
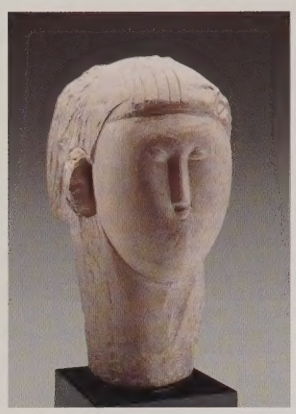



FIGURE 6. Three Modigliani works donated to museums in 2017: Left: ***La belle espagnole,*** 1918. Oil on canvas. 92 x 60 cm (approx. 36 ¼″ x 23 ½″). Castello di Rivoli, Torino, Italy; Center: ***Woman in a Sailor Shirt,*** 1916. Oil on canvas. 55 x 35 cm (approx. 21 ½″ x 13 ¾″). Solomon R. Guggenheim Foundation, Venice; Right: ***Head,*** c. 1913. Limestone. 52.4 x 24.8 x 37.5 cm (20 ⅝″ x 9 ¾″ x 14 ¾″). Kimbell Art Museum, Fort Worth, TX. AG 2017.01. Ph: Kimbell Art Museum / Art Resource, NY.

announced that it will sell Modigliani's *Nu couché* of 1917 **(FIG. 7)** in May. The estimate is $150 million. [Editor's Note: It sold for $157.2 million, with premium, on May 12.]

FIGURE 7. Modigliani's ***Nu Couché (sur le côté gauche)***, 1917. Oil on canvas. 89.5 x 146.7 cm (35 ¼″ x 57 ¾″). Sold at Sotheby's, New York on May 14, 2018.

Modigliani's popularity has not always been this high. For decades, his prices lagged far behind his contemporaries, and scholarship on his artwork was scant. 2002 was a turning point in terms of exhibitions and scholarship. In October of that year, I organized a major Modigliani exhibition, "Modigliani and the Artists of Montparnasse," which traveled from the Albright-Knox Art Gallery in Buffalo to the Kimbell Art Museum in Fort Worth, Texas and then to the Los Angeles County Museum of Art. That same year, same month, and same week, Marc Restellini also opened a major Modigliani exhibition in Paris, one day apart from mine. Both shows were accompanied by substantial catalogues, each very different from the other, and both shows had exceptional attendance. In 2010, fifteen years after an enchanting Modigliani sculpture did not sell at Christie's with a $1-2 million estimate **(FIGS. 8A-C)**, a Modigliani sculpture sold for $53 million. So, 2010 was the next pivotal year. Then, in 2014, another Modigliani sculpture sold for $70 million. Clearly, in that short nineteen-year period, from 1995-2014, something changed in the Modigliani field. And it has been upward ever since.

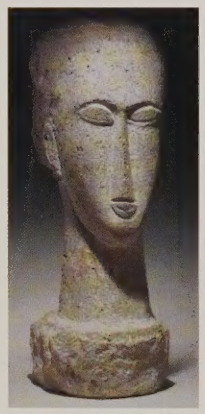


FIGURE 8A-C. Three Modigliani sculptures. **A (left):** ***Tête*** did not sell at Christie's in 1995; **B (center):** ***Tête,*** c.1910-12. Limestone. Ht: 65 cm (approx. 25 ½″). Sold at Christie's in 2010 for $53 million; **C (right):** ***Tête,*** c. 1911-12. Stone. Ht: 73 cm (28 ¾″). Sold at Sotheby's in 2014 for $70 million.

CATALOGUES RAISONNÉS

Why is another Modigliani catalogue raisonné needed after five have already been produced by an unexpected group of individuals? The first catalogue was done in 1929, just nine years after the artist's death and could have been invaluable **(FIG. 9)**. However, the author, a German illustrator and translator named Arthur Pfannstiel, illustrated fewer than a third of the works in the catalogue raisonné, basically, rendering it almost useless.[1] In the 1950s, he published a second edition, and, curiously, it, too, was also minimally illustrated.[2]

PAST MODIGLIANI CATALOGUES RAISONNÉS

- **Arthur Pfannstiel: 1929, second edition in 1956.**
- **Joseph Lanthemann: 1970.**
- **Ambrogio Ceroni: editions in 1958, 1965 and 1970.**
- **Osvaldo Patani: 3 volumes, 1991-1994.**
- **Christian Parisot: 5 volumes, 1990-2012.**

Wildenstein Institute/Marc Restellini: Launched in 1997; Terminated in 2015. No volumes published.

FIGURE 9. Modigliani catalogues raisonnés.

In 1970, another German, a philosophy scholar named Joseph Lanthemann with no previous experience working on Modigliani, produced a catalogue raisonné in two years, reproducing every work that even remotely looked like a Modigliani.[3] That tome is considered overly generous. That same year, Italian businessman and consultant Ambrogio Ceroni produced the third edition of his esteemed catalogue raisonné with 337 paintings and 25 sculptures.[4] Today, Ceroni is considered the bible in the field, used by auction houses and curators. Everyone agrees, however, that it is incomplete, even the late Ceroni himself. He did not consider it to be exhaustive and expected that there would be additions. He died in 1970, the year the third edition of his catalogue raisonné came out. My colleague Alessandro de Stefani at The Modigliani Project and I feel that about 50-60 correct paintings and three sculptures should be added to Ceroni.

"Why is another Modigliani catalogue raisonné needed after five have already been produced by an unexpected group of individuals?"

Osvaldo Patani, a sports writer, published his 3-volume catalogue raisonné between 1991 and 1994.[5] Like Ceroni, he lived in Milan and based his book very closely on Ceroni's work, but instead of black-and-white thumbnail images, he reproduced full-page illustrations in color and added 12 new works. He also included some provenance and exhibition history. This publication remains important for its color images and the nuggets of new information provided. Then, an individual named Christian Parisot began publishing his multi-volume catalogue raisonné[6] and other Modigliani publications, which I personally find unusable in every way. Suffice it to say that the *Independent* newspaper of London called him a fraud. For additional information, I refer you to the May 2017 issue of *Vanity Fair,* which has an excellent overview of the Modigliani field, written by Milton Esterow (who is in the audience today).[7]

In 1997, the Wildenstein Institute in Paris launched a Modigliani catalogue raisonné, headed by Marc Restellini. It was terminated in 2015, after eighteen years. Guy Wildenstein indicated that he wanted it to be a group or *committee* endeavor. Marc

1 Arthur Pfannstiel. Preface de Louis Latourrettes. *Modigliani: L'Art et la Vie.* Paris: Marcel Seheur, 1929.

2 Arthur Pfannsteil. *Modigliani et son oeuvre. Étude critique et catalogue raisonné.* Paris: La Bibliothèque des Arts, 1956.

3 J. Lanthemann. *Modigliani, 1884-1920: catalogue raisonné: sa vie, son oeuvre complet, son art.* Barcelona: Gráficas Condal, 1970.

4 Ambrogio Ceroni; Piccioni, Leone (presentazione). *I dipiniti de Modigliani.* Milan: Rizzoli, 1970.

5 Osvaldo Patani. *Amedeo Modigliani: catalogue generale.* Milan: Leonardo Editore, 1991-1994.

6 Christian Parisot. *Modigliani: catalogue raisonné.* Livorno: Graphis Arte, 1990-1991.

7 Milton Esterow, "Modigliani Forgery Epidemic," *Vanity Fair,* May 2017.

Restellini said in the *Vanity Fair* article that he was not interested in a group approach. I have been told by a senior person at the Wildenstein-Plattner Institute that the research material and files from that project are proprietary and still belong to Wildenstein.

"Today, Ceroni is considered the Bible in the field, used by auction houses and curators. Everyone agrees, however, that it is incomplete, even the late Ceroni himself."

THE MODIGLIANI PROJECT

The catalogue raisonné that The Modigliani Project is working on will be the only one produced by a nonprofit organization and by committee. The committee aspect is absolutely key to help ensure that our decisions are accepted by the professional art community. Close involvement with the Modigliani family is also essential. Sarah Modigliani, a cousin of the artist, is one of our founding board members, and we are in regular contact with Modigliani's granddaughter in Paris. Sarah's father, Nick, is on our Advisory Council. The family has an inherent interest in protecting their name and legacy.

I founded The Modigliani Project in 2013 to promote research and scholarship on the artist, plus to defend Modigliani's legacy, because it did not appear to be being done. Last summer, we obtained an office in New York in a beautiful building on West 43rd Street, one block from the New York Public Library. Our protocols and practices will soon be posted to our website www.modigliani-project.org. We are strictly following international guidelines: from the Catalogue Raisonné Scholars Association, the College Art Association and the Authentication in Art group in the Hague. We agree that three criteria are needed for accepting a painting as correct: connoisseurship, scientific testing, and provenance. For Modigliani, the need for *verifiable* pre-WWII provenance is particularly acute. We aim to benefit the public: we offered a free lecture last fall for 170 people — standing room only — at the National Arts Club. Sarah Modigliani is planning to conduct an oral history project with some very elderly members of her family, among others. Of course, they didn't know Modigliani (who died in 1920), but they were born soon after he died, and they heard stories about him and about the family. I interviewed Nick Modigliani, who told me many things that I didn't know.

As part of our outreach, I am speaking at this program to IFAR members and guests and will be presenting to the Authentication in Art group in the Hague in June. In addition, I serve on a French government panel that is studying Modigliani works in French public collections. Between The Modigliani Project's Council, Advisory Council, Catalogue Raisonné committee, and two assistants, we are a group of more than twenty individuals, with a deep commitment to Modigliani and his art. Collectively, we have more than 100 years of Modigliani research experience and an exceptional trove of valuable materials. We add to our research every week. Just this March, in fact, we identified a painting from an early exhibition thanks to descriptions in reviews. We are excited about the future and want to move ahead as quickly as possible to ensure Modigliani's legacy. We plan to start posting newly confirmed paintings on-line by 2020, the centennial of the artist's passing. Thank you.

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WHAT IS IT ABOUT MODIGLIANI?

LENA STRINGARI AND ISABELLE DUVERNOIS*

Lena Stringari

Isabelle Duvernois

Lena Stringari (LS): Thank you, Sharon, for all the work you do with IFAR, which is brilliant and an important contribution to the field.

Isabelle Duvernois and I are going to present a brief overview of the work we have been doing as part of a consortium involved in a project referred to as the Modigliani Technical Research Study. This collaboration began as the brainchild of Nancy Ireson and Simonetta Fraquelli, the curators of the Modigliani exhibition at the Tate Modern in London (November 23, 2017 – April 2, 2018). The research itself began at the Tate, and our colleagues, Annette King and Joyce Townsend in the conservation department of the Tate, were the primary investigators. They invited several institutions to join them in looking at the Modigliani works in their respective collections. It is an excellent example of international collaboration and has resulted, as Sharon pointed out, in several articles in the *Burlington Magazine*.[1]

As conservators and scholars, we often investigate works of art through detailed technical examinations and material analysis. Our goal is to make comparisons with other works and to enhance our understanding of the working process of the artist. But I want to be very clear that, although we often point out inconsistencies and incongruous materials, we – at least I – am not in the related business of authentication.

The Guggenheim and the Met, along with the Courtauld Institute of Art, studied the Modigliani nudes in our collections that were painted between c. 1916-1918, shortly after Modigliani arrived in Paris **(FIGS. 1-3)**. Using techniques such as microscopy, X-radiography, infrared reflectography, X-ray diffractions, and scanning electron microscopy, we were able to identify techniques and materials that suggest a chronology and a preferred working method of the artist.

I do not consider myself a Modigliani scholar; however, this project roused my interest in looking more closely at his works in the Guggenheim collection. Perhaps the most important aspect of the project lies in our ability to look closely. I was able to visit the Tate exhibition, and after seeing our nude under very close examination in a laboratory, I was able to make important comparisons among the works from this period. Isabelle and I together have now looked at a number of works and are able

* Lena Stringari is Deputy Director and Chief Conservator, Guggenheim Museum and Foundation. Isabelle Duvernois is Conservator in the Paintings Conservation Department at The Metropolitan Museum of Art.

The two conservators spoke jointly about their research on the Modigliani nudes in their respective museum collections, as part of The Modigliani Technical Research Study.

1 See, *The Burlington Magazine*, March, April and May 2018 issues for five articles and one editorial about The Modigliani Technical Research Study.

FIGURE 1. Amedeo Modigliani, ***Female Nude,*** c. 1916. Oil on canvas, 92.4 x 59.8 cm (approx. 36 ⅜″ x 23 ½″). The Samuel Courtauld Trust gift, 1932. The Courtauld Gallery, London.

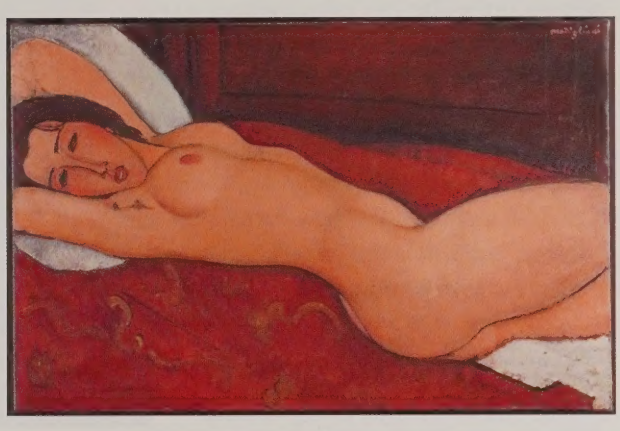


FIGURE 2. Amedeo Modigliani, ***Reclining Nude,*** 1917. Oil on canvas. 60.6 x 92.7 cm (23 ⅞″ x 36 ½″). 1997.149.9. The Mr. & Mrs. Klaus G. Perls Collection. The Metropolitan Museum of Art, New York.

FIGURE 3. Amedeo Modigliani, ***Nude,*** 1917. Oil on canvas, 73 x 116.7 cm (28 ¾″ x 45 ⅞″). Founding collection, by gift 41.535. Solomon R. Guggenheim Museum, New York. Ph. SRGM/ Art Resource, NY.

to make some informed decisions about patterns and consistencies in the artist's approach, as well as a certain lexicon that Modigliani used consistently. Sometimes these characteristics are only visible when you look under a microscope.

We are going to show you images of several paintings along with magnified details, because we think visuals will best convey the features we would like to describe.

I will turn the podium over to Isabelle Duvernois, who will discuss a Modigliani symposium that was just held at the Tate with a number of colleagues and Modigliani scholars.

Isabelle Duvernois (ID): In addition to the *Burlington Magazine* publications, a culmination of the Modigliani Technical Research Study was a scholars' study day held on March 16, 2018 at the Tate, which was illuminating after months of intense looking and collaboration. I want to underscore how crucial the collaboration with our colleague scientists has been, some of whom are in the audience tonight, and how fortunate we all have been working side by side.

Amongst our many collaborators present that day were Aviva Burnstock, Head of the Department of Conservation and Technology at the Courtauld, our collaborator on the nudes, directly engaging about the Courtauld's painting in the exhibition **(FIG. 4);** Annette King, our collaborator from the Tate; Nancy Ireson and Simonetta Fraquelli, the

co-curators of the Tate exhibition; colleagues from Yale, Chicago, the Barnes Collection, and from France. The French team, a collaboration between the Center for Research and Restoration of Museums of France (C2RMF) and the Lille Museum of Contemporary Art, will undertake a similar research project.

FIGURE 4. Some of the attendees at the Tate Modern's Modigliani Study Day, March 16, 2018.

LS: We are now going to speak about works in our own collections, but first, I would like to mention the Courtauld picture **(FIG. 1),** which is the earliest Modigliani nude that we studied, in collaboration with conservator and scientist Aviva Burnstock. In fact, this work, as is apparent when compared with the nudes at both the Guggenheim and Met, relates to some of Modigliani's earlier working methods, characterized by a visible ground layer, extensive drawing and a less finished surface. There is, however, a sophisticated use of, for example, a blue-gray priming, which is visible in the model's face and the edges of her eyes, eyebrows, nose, and lips. Modigliani utilizes the blue-gray priming, leaving it visible at the borders of the forms.

We were able to analyze the grounds of the Courtauld painting and compare them to grounds in other pictures, which is discussed in detail in our *Burlington* article.[2] Of particular interest is that the composition of the ground in the Courtauld nude matches the composition of that in the *Portrait of Manuel Humbert* (1916), which is at the National Gallery of Victoria, Melbourne, while the Met and the Guggenheim paintings both have a similar blue-gray ground.

We will now move on to the two pictures – at the Met and the Guggenheim – for which we have the most information **(FIGS. 2 & 3).**

ID: The Met's *Reclining Nude* is dated 1917. Its dimensions, 60.6 x 92.7cm (about 23 x 36 inches), roughly corresponding to a standard size, are common to numerous Modigliani portraits we have examined. Stretchers were sold in pre-set sizes, and 60 x 92 corresponds to a *Marine* size 30. Articles in the May 2018 issue of the *Burlington Magazine* discuss Modigliani's use of the *Marine* format. Often, unlike in this instance when he uses it in the traditional, horizontal orientation, Modigliani would flip the canvas vertically. The Courtauld picture, for instance, is exactly the same format but flipped vertically, 92 x 60 cm. Modigliani favored this vertical orientation for most his portraits.

The Met's picture is stretched on its original strainer **(FIG. 5),** whose simple construction consists of four battens plainly joined together with four nails at each corner. This is a feature we observed on several strainers used by the artist. For instance, Annette King has found a similar construction on the Tate's picture, *The Little Peasant,* which belongs to the paintings Modigliani painted while staying in the South of France. The Met's canvas is unlined – meaning it hasn't been relined – and its weave is a plain weave with an average thread count of about 14 threads per centimeter by about 12 threads per centimeter. Our research benefited from recent technological advancements that enable us to get very precise fingerprinting about canvas and canvas weaves through a project called the Thread Count

[2] Aviva Burnstock, Isabelle Duvernois and Lena Stringari, "Modigliani's painted nudes 1916-17," in *The Burlington Magazine,* CLX, April 2018, pp. 319-324.

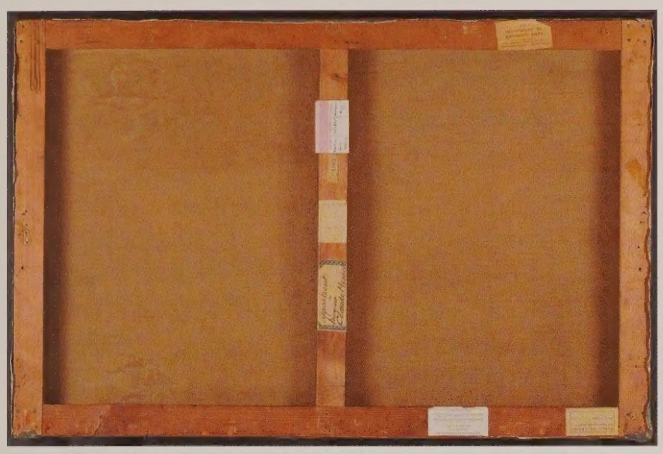


FIGURE 5. Verso of Fig. 2, *Reclining Nude,* 1917, Showing the five-member strainer. Ph. Dept. of Paintings Conservation, The Metropolitan Museum of Art.

Automation Project.[3] Interestingly, the Met's canvas and the Guggenheim's were found to have a perfect match in their canvas pattern.

An X-radiograph of the Met's *Reclining Nude* **(FIG. 6)** shows the paint layer's opacity. The white on the image denotes the concentration of heavy metal pigments. In this particular case, the heavy pigment is mostly lead white, which Modigliani would have used in the flesh tones. He's mixed a lot of lead white with pink, red, and red lake. One of the most interesting features is that the outlines of the figures, and of the composition at large, are quite distinct. There is very little searching. Modigliani's drawing is very strong and assured. The only area where he made adjustments is in the model's face, in the placement of her eyes which were initially placed higher on the face. At some point, Modigliani also had the contour of the face going a little to the right. These reworkings tell us that the face was the critical area with which he was struggling a bit.

Again, Modigliani has a very clear idea of his drawing. This assurance is something that we observed numerous times. In the case of the Met's picture, we did not identify the either pencil or charcoal drawing with infrared reflectography. Not that the drawing is inexistent; it is just that the dark painted outlines did not allow us to see the possible presence of an underdrawing. In several other paintings, the drawing is extremely clear. Modigliani starts with a drawing and then fills in with paint up to the line, very precisely. Afterwards, he often goes back and paints the outline very carefully, either with a brown or a black paint. Sometimes, he will also score his outline with the tip end of the brush. In the X-radiograph, you can see that feature very well – it is the very thin scored line showing like a white ridge, that shows in particular places. In other words, he went back after painting and reinforced his outline, not only by painting it, but also by scoring into it.

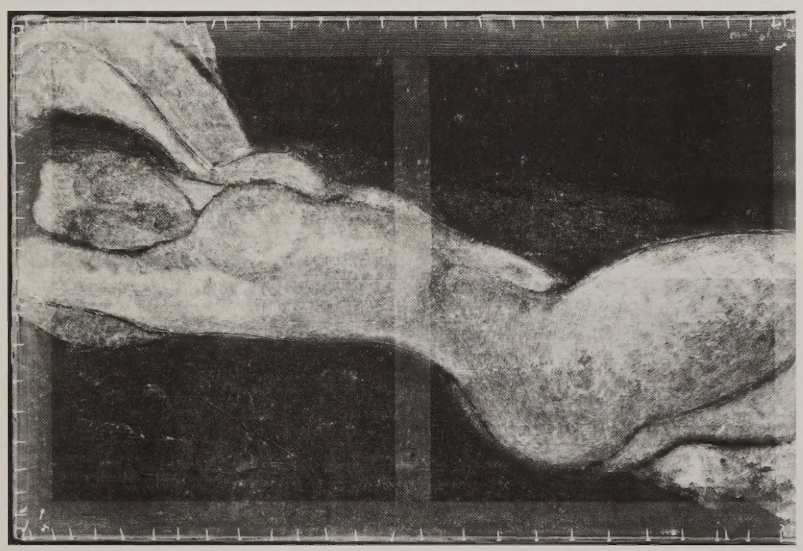


FIGURE 6. X-radiograph of Fig. 2. Ph. Dept. of Paintings Conservation, The Metropolitan Museum of Art.

[3] The authors would like to thank C. Richard Johnson, Jr. at Cornell University, Ithaca, Don H. Johnson at Rice University, Houston, and Robert G. Erdmann at the Rijksmuseum/University of Amsterdam, who contributed to the Thread Count Automation Project.

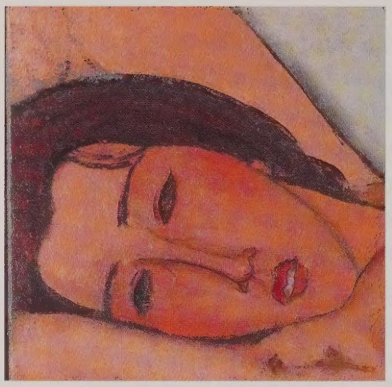


FIGURE 7. Detail of *Reclining Nude* showing outlines and gray ground layer.

FIGURE 8. Detail of the legs in Fig. 2, *Reclining Nude,* showing outlines and textured brushstrokes.

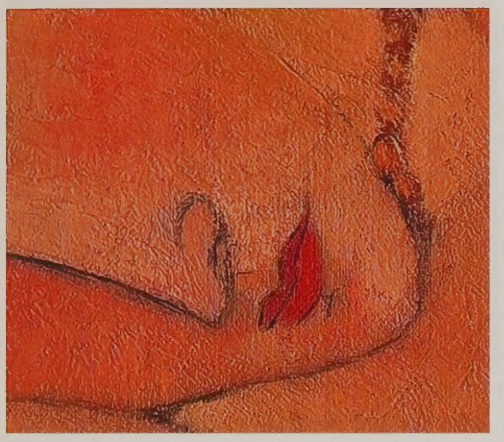
Some of Modigliani's painting technique can seen by looking at the Met's painting under high magnification **(FIGS. 7 & 8).** Both the Met's and the Guggenheim's paintings, and several others, have a gray-colored ground layer. However, in the Met's painting, Modigliani is not using it in the same manner as in the Courtauld's or the Guggenheim's, where he let it show in key places, between the forms and outlines. From his academic training, he knew that a gray underlying ground color influences the overall appearance of the paint layer, optically absorbing the colors and contributing depth to the lighter flesh tones. It acts completely differently from a white ground layer, which is reflective and enhances the brightness of colors.

Modigliani is a master at manipulating the subtle contrasts of orange and red flesh tones. We observed this in the amount of work and finish he brings to the flesh tones, which contrasts dramatically with the surrounding elements, such as the bed linen, the sofas, or the background wall. He polishes his flesh tones so that they become very smooth. He builds up the flesh tones from light to dark with many layers of paint, but finishes the painted surface by manipulating it by hand. This is very clear and can be seen in the side of the breast, which is very smooth. Sometimes, on the legs, for example, he goes back and dabs more paint, and finally re-outlines them on top of the composition. Magnified details of the breast **(FIG. 9A)** and the buttocks **(FIG. 9B)** illustrate well how he polishes the paint surface. He most likely used some cloth, dragging the cloth in circles over and over. The photomicrographs show the fine circular striations created by a cloth dragged into semi-fresh paint. There is evidence of bits of fibers caught in the paint layer. This was a particularly interesting technical observation for us.

LS: Just a note about the rubbing and the smoothing and polishing of the skin tones. There was a very interesting reference to it in the biography by his daughter, Jeanne Modigliani,[4] where she says that he would take a piece of paper and actually rub over the flesh. This polishing effect is visible on both pictures. Through scientific analysis,

FIGURES 9A and **B.** Photomicrograph of the breast **(left)** and the buttocks **(right)** in Fig. 2. Ph. Dept. of Paintings Conservation, The Metropolitan Museum of Art.

[4] Jeanne Modigliani, *Modigliani: Man and Myth,* trans. into English from Italian. New York: The Orion Press, distrib. by Crown Publishers, 1958.



FIGURES 10A and **B.** Details of Fig. 3, the Guggenheim Museum's *Nude.*

we discovered that our two paintings had identical grounds – a single layer of white barium sulfate, calcium sulfate, and carbon black.

The Guggenheim *Nude* **(FIG. 3)** has another bluish tone painted on top of that. We know that Modigliani was playing with complementary colors, clearly visible at the edges of the forms **(FIGS. 10A & B).** With the pinkish orange flesh tones next to the blue, he achieves a beautiful and subtle effect. Later on, Modigliani will use primarily white grounds, which will render the paintings much brighter and less dense than the works that we are discussing now.

Modigliani's drawing – the lines, at least in the Guggenheim *Nude* – is generally very thin, dilute dark blue or black, and the flesh tones are painted up to the line, so there is a little trough, essentially, where the flesh tones are painted up to the dark outline. At times, he goes back in and reinforces those contours.

FIGURE 11. Detail of Fig. 3, showing the pubic area.

FIGURE 12. Detail of Fig. 3, shown in raking light.

An additional observation in the nudes was that the pubic area is often left in reserve **(FIG. 11),** which means that the flesh tone is not painted; instead the artist left an unpainted triangle and subsequently fills in the form, a precise anticipation of this compositional element.

The Guggenheim painting, unfortunately, is lined, which is quite often the case with paintings of a certain age. A lining may create a bit of weave emphasis. So, although the canvas itself is actually quite coarse and would have naturally lent a textural effect to the surface of the painting, there is some enhancement to that texture, due to the lining, which is particularly visible in raking light **(FIG. 12).**

As Isabelle noted, Modigliani's nudes are not as labored as some of his earlier

FIGURE 13. Infrared reflectogram of Fig. 3.

FIGURE 14. X-radiography of Fig. 3.

works, in which he was using less fine materials. We attribute the improved materials to the fact that his dealer, Léopold Zborowski, was now giving him a stipend, so he didn't need to reuse his canvases and could purchase quality paint and brushes. Furthermore, there is a certainty about these nudes that you do not see in the earlier works, although there are some compositional changes that can be seen in an infrared reflectogram **(FIG. 13).** He has, for example, moved a part of the forearm to the right. For the most part, however, we can see in the X-radiograph image **(FIG. 14)** that there is quite a definitive drawing. We see this important line describing the silhouette of her body, which Modigliani creates by moving the paint, and the white area where he has scored and scraped the paint that forms a ridge exactly where he wished to place that contour.

The detail in **FIGURE 15** shows Modigliani's strategic use of the painted blue ground, visible all along the body contours, in her facial features and in her armpit.

There was a varnish on the Guggenheim's work at one point, which was removed at the Guggenheim **(FIG. 16);** however, I did see that quite a few paintings at the Tate exhibition were still varnished. We do not believe that these varnishes were original or applied by the artist.

Photomicrographs of the Guggenheim's *Nude* **(FIGS. 17 & 18)** splendidly demonstrate how the paint is applied. The flesh tones are dragged over

FIGURE 15. Detail of Fig. 3, showing Modigliani's use of a blue ground.

FIGURE 16. Ultraviolet illumination photograph of the Guggenheim's *Nude.*

FIGURES 17 AND 18. Photomicrographs of a detail of the Guggenheim's *Nude* showing the blue ground. Ph. Conservation Dept., Solomon R. Guggenheim Museum, New York.

the blue layer below in a very dry manner and then polished down. All of the pictures that we viewed from this period revealed this same phenomenon. Earlier, we mentioned the little troughs that are left along the outlines. The photomicrographs show where the drawing lies and how the paint is pulled up to the line, as opposed to it being drawn over.

A detail of the lips **(FIG. 19)** depicts few strokes, a deft and certain hand, leaving small bits of the outline visible. Here we can see Modigliani's characteristic brushwork—the dabbing, and the splayed brush. Interestingly, the face itself was almost mask-like; it appears to be more belabored and does not have the same brushwork one sees in the figure.

The signature on the painting **(FIG. 20)** appears to have been signed while the brown layer below was still wet. It picks up the brown from below, and then trails off at the end.

ID: As mentioned earlier, a team led by Professors Richard Johnson at Cornell, Don Johnson at Rice University, and Robert Erdmann at the University of Amsterdam, has developed a software program called the Thread Count Project. It is based on some sophisticated algorithms enabling precise measurement of both horizontal and vertical canvas thread densities and the spacing between those threads, which all capture the unique fingerprint of a canvas. Don Johnson, who did all the thread counts of Modigliani paintings for this particular project, was able to make some canvas associations.

FIGURE 19. A detail of the lips of the Guggenheim's *Nude* showing very few brushstrokes.

FIGURE 20. Signature on Fig. 3, the Guggenheim's *Nude.*

Weave Match Report

Painting	*Artist*	*Date*	*Museum*	Warp/Weft (th/cm) avg	σ
C186	Modigliani, Amedeo	1917	Solomon R. Guggenheim Museum	**12.4/14.2**	0.2/0.8
C199	Modigliani, Amedeo	1917	Metropolitan Museum of Art	**12.4/14.4**	0.1/0.8

Table 1: Weave statistics for each painting.

FIGURE 21. Weave match report for the Met's and Guggenheim's nudes. Thread Count Automation Project, October 2017.

Sometimes, the canvases were close enough to create a "clique," or a small group of canvases that could possibly come from the same roll. In a few instances, he identified a perfect canvas match, as with the nudes at the Met and the Guggenheim **(FIG. 21).** This suggests that the two paintings very likely were painted on pieces of canvas cut from a same roll. **FIGURE 22** shows the potential alignment of our two canvases on a large canvas roll, with the Met's painting shown vertically, meaning the warp direction is vertical. The Guggenheim picture is the exact opposite, with a horizontal warp direction. The warp angle maps show the density patterns repeating in the exact same fashion. This was quite extraordinary for us because not only did we have a match in canvas, but Lena and I also found that we had the exact same ground composition, which, as mentioned earlier, was identified as a single layer of white barium sulfate, calcium sulfate, and carbon black. This was a pretty clear sign that: a) the canvases were most likely from the same roll, and b) had been commercially prepared in the exact same manner.

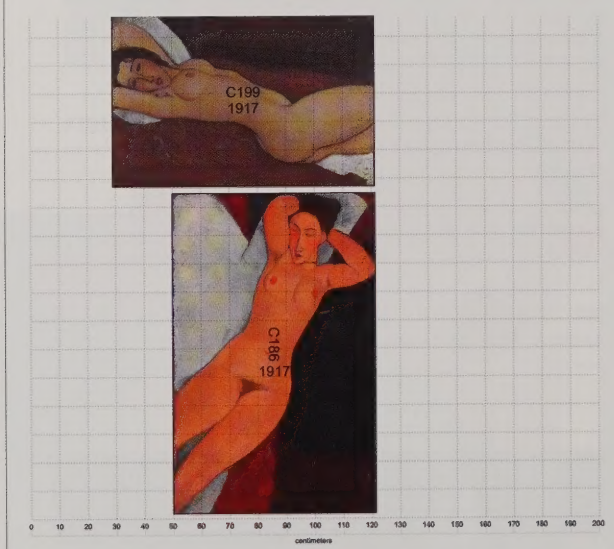


Figure 1: Paintings shown in weave match alignment. Horizontal and vertical lines are each separated by 10 cm to facilitate alignment and judging distances.

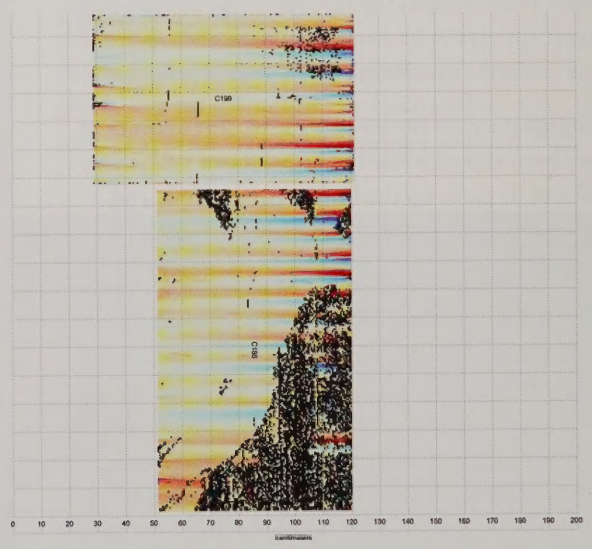


Figure 3: Warp angle maps for the paintings shown in weave match alignment. Horizontal and vertical lines are each separated by 10 cm to facilitate alignment and judging distances.

FIGURE 22. The two paintings shown in weave match alignment. (C186 = The Guggenheim *Nude;* C 199 = The Met's *Reclining Nude*)

FIGURE 23. X-radiograph of Fig. 1, *Female Nude,* The Courtauld Gallery.

LS: In conclusion, I would like to return briefly to the Courtauld picture **(FIG. 1).** This *Female Nude* is an earlier painting (1916) than those at the Met and the Guggenheim, quite different in feeling and the way that the paint is handled. It does, however, have a mask-like face similar to the later pictures. The X-radiograph image **(FIG. 23)** is particularly interesting because Modigliani's splayed brush technique makes her body look like a leopard. The entire work is daubed and splayed; whereas in the Met and Guggenheim pictures, one only sees this brushwork in certain areas. The dabbing is seen primarily in works before 1916, and it can be seen as one of Modigliani's signature techniques. Also significant in the Courtauld painting is the black border along the perimeter of the painting. The Met and Guggenheim pictures do not have it, but the black border is a convention that Modigliani often used. We don't know if that was because he was working off the stretcher and thus was defining the space, or whether he was using the border as a framing element. Much more blue ground shows through the Courtauld picture, and the flesh is not worked as heavily or as polished as the later paintings. A detail of the eyelashes of the woman in the Courtauld picture **(FIG. 24)** – very simple, just a few little lines – illustrates Modigliani's mastery and is a fine detail on which to end this brief account of Modigliani Nudes .

Thank you.

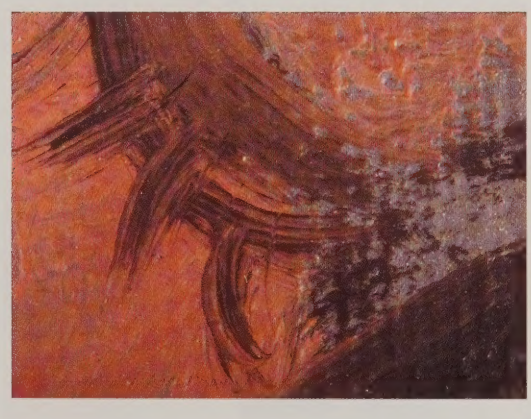


FIGURE 24. A detail of the eyelashes of the Courtauld Gallery's *Female Nude.*

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WHAT IS IT ABOUT MODIGLIANI?

MARC RESTELLINI*

First, I wish to thank Dr. Sharon Flescher who kindly invited me to tell you more about Modigliani.

For the last 12 months, we have been overwhelmed by significant events regarding Modigliani. These include extremely positive ones; namely, the international homage through three great exhibitions **(FIG. 1)** – one in New York at the Jewish Museum, one in Saint Petersburg at the Musée Fabergé celebrating the Netter collection, and, lastly, the fine retrospective at the Tate Gallery in London.

Modigliani Unmasked, The Jewish Museum, New York, organized by Mason Klein

Modigliani, Soutine and other legends of Montparnasse, The Fabergé museum, St. Petersburg, curated by Marc Restellini

Modigliani, Tate Modern, London, curated by Nancy Ireson and Simonetta Fraquelli

FIGURE 1. Three recent museum exhibitions of Modigliani works.

Yet, the exhibition held in Genoa, Italy in 2017[1] was a dark shadow in the picture **(FIG. 2).** It will remain one of the biggest scandals in the history of museums and reminds us that fighting fakes, including fakes of Modigliani's works, is an endless fight.

> "The exhibition held in Genoa, Italy in 2017 … will remain one of the biggest scandals in the history of museums and reminds us that fighting fakes, including fakes of Modigliani's works, is an endless fight."

My focus here is to take stock of the fakes issue, and then, to take the opportunity to vigorously warn about a situation that deeply alarms me and has become an everyday concern.

Let us first examine the Genoa exhibition. From the opening day, many alarmed Italian friends alerted me to how poor the show was, with a few possible fakes. They said there were between two and five, which already seemed quite problematic, because whenever a fake is shown in a museum,

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1 "Modigliani," Palazzo Ducale, Genoa, March 16-July 16, 2017 (closed early, on July 13, 2017).

The Telegraph

Modigliani paintings once thought to be worth tens of millions now denounced as fakes

The Telegraph, article by Nick Squires, 10 January 2018

FIGURE 2. Article by Nick Squires in the *Telegraph*, 10 January 2018.

it goes against the interests of the painter you study and support. When the exhibition catalogue became available, I was astonished to count not two to five, but sixteen notorious fakes (in all, 20 out of the 21 works in the exhibition by Modigliani and other artists were fakes). Moreover, we had known of these particular fakes for years, and they were shamelessly recycled in the show. This was not a question of a few mistakes, but something else.

I immediately contacted the Italian authorities, on the basis of an expert right (the *droit d'expert*) granted to me by the Cours d'Appel de Paris (Paris Court of Appeals). This acknowledgment is quite explicit and, in any case, entitles me to take action in such circumstances.

Within forty-eight hours, I was called by the Italian criminal police, who asked me to send them the complete list of the works I considered to be fake, saying that it would be their basis for a preliminary investigation, which I did. About a month later, I was invited to Rome to meet the special police department and bring them all the information I had on these works. This allowed them to seize the twenty-one works in the exhibition; to close the exhibition; and to indict three people — for the time being. Furthermore, I asked the police authorities and the prosecutor to order the destruction of the works that we deemed fake.

Both of the judiciary expertise reports ordered by the Genoa prosecutor, in accordance with Italian procedures, confirmed all my conclusions.

Nearly all the works were already known to the Institut Restellini for various reasons. The main reason was that I had come across them in different claims and investigations when I was involved in the case against Christian Parisot regarding counterfeited Jeanne Hébuterne works. In that particular case, Christian Parisot, author of a Modigliani catalogue raisonné, was eventually sentenced to prison for forgery and artistic counterfeits. At that time, the judges and criminal police officers had asked me to provide them with reports and precise analyses of the possibly forged or counterfeited works that were published by Parisot. Unfortunately, the various procedures never included a request to have the forged works destroyed. In the different cases I was involved in, I was probably naïve to think that destroying the forgers would be enough to make their fake paintings disappear. This, indeed, was a serious mistake. Fakes are like cockroaches: if they are not destroyed altogether, they never fail to reappear, and this is exactly what happened here.

Let me explain the issue of fakes and forgers. Today, a forger is still considered a sort of a hero by the general public, a kind of romantic artist who succeeds in deceiving everybody – experts, the public, police investigators, and judicial authorities. Moreover, the forger is also perceived as a modern Robin Hood: he steals from the rich, which somehow is not a serious offense. It is a "forgivable fraud." Yet, in

Journée de formation à la Cour de cassation
Le faux en art
Vendredi 17 novembre 2017
de 9 h 00 à 16 h 30
Grand'Chambre de la Cour de cassation
Entrée 5, quai de l'Horloge, Paris 1er
ENM
COUR DE CASSATION

FIGURE 3. The Court of Cassation, Paris, conference "The fake in art," 17 November 2017.

the real world, a forger is a criminal. He is a lawless individual whose only concern is to organize and plan his crime, both artistically and commercially, from the creation, the sale and the concealment, to the work's recycling.

Some time ago, I attended an important conference at the Cour de Cassation in Paris on the issues generated by fakes **(FIG. 3)**. The present trend is to improve legal regulations in all countries, and adapt the judicial arsenal to fight this plague that is spreading in very dramatic and alarming ways.

"I wish to sound the alarm bell. The Genoa exhibition was only the tip of the iceberg. The scientific and art history communities—and I belong to both—are unprepared for this fight. Forgers remain far ahead of us, and this is alarming."

This, indeed, is a judicial issue. Law, only the law, and nothing but the law. And it is now that I wish to sound the alarm bell. The Genoa exhibition was only the tip of the iceberg. The scientific and art history communities – and I belong to both – are unprepared for this fight. Forgers remain far ahead of us, and this is alarming.

Today's forgers are organized. Legislation adapts, but always with some delay, which enables forgers to get organized and prepare. Fortunately, nowadays, forgers are no longer strictly defined as artists who make fakes. Legally, a forger is also one who circulates a fake work, publishes it, sells it, certifies it, provides documents and literature about it and its provenance, and then has it exhibited worldwide. For this reason, the legal definition of a forger has been extended, and, as I hope you will understand, they are now less and less romantic characters.

My fear about forgers is not a mere fantasy. It is strictly based on the evolution of forgers for the last decade. We no longer deal with wacky or eccentric characters who, on their own, paint their fakes, certify them, exhibit them, and sell them; a sort of one-man forgery studio. We now see dozens of scientific laboratories, with the fanciest equipment and limited competence, that guarantee the difference between an authentic work and a fake one with the help of fail-proof scientific means. All of this is fuelled by anonymous websites, which are nothing but forgers' platforms. Moreover, they are clearly determined to have access to the museum world and to connect with distinguished people in museum networks.

They are ultimately and totally legitimized when their forgeries are shown in an exhibition alongside authentic works of art: at that point, the forgery becomes an authentic work with the accidental complicity of the art institution.

In this respect, a concern has been on my mind for more than twenty years. You may know that when I started working on the Modigliani catalogue raisonné with Daniel Wildenstein, I asked him for equipment to undertake scientific analyses and requested to start research on Modigliani's work from the very beginning, instead of simply resuming it. How have I organized the corpus since 1997? Exactly on the same scientific basis as for medical analyses. Let me remind you that, at that time, there were very few scientific laboratories specializing in works of art. In France, there was the Louvre laboratory, which was not as elaborate as today, and the criminal police laboratory, which was excellent and still is.

But none of these were open to the public, which is why I asked to have a scientific analysis unit established within the Wildenstein Institute. This, as I recall, made me the laughing stock of the art community. And it was no easy task to enforce my methods even at the Wildenstein Institute. Nevertheless, following the example of medical research, I developed a protocol of scientific analysis, which has been the same for the last twenty years **(FIG. 4)**. This protocol now allows me to have a database of scientific analyses for nearly four hundred works, and countless digital photos, showing works in infrared, ultra-violet, false color process, pigment analyses, non-intrusive magnetic resonance (MRI), and X-ray images.

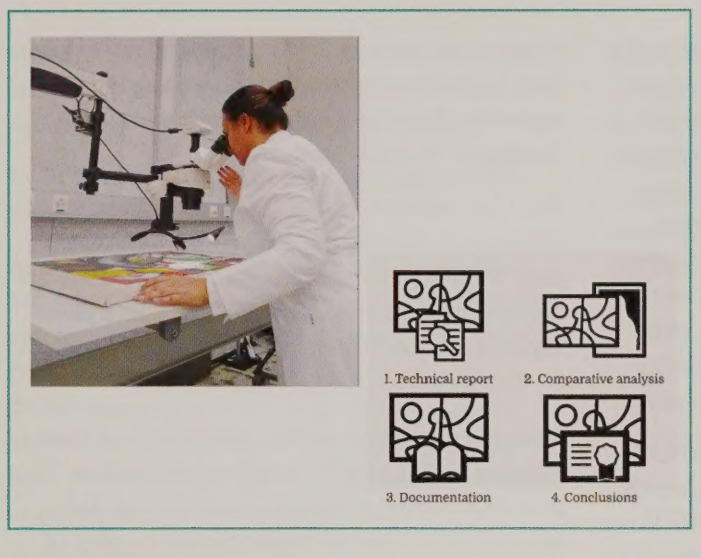


FIGURE 4. The Institut Restellini's protocol of scientific analysis.

We now have the most extensive database of scientific analyses and imagery ever developed for the completion of a catalogue raisonné on an artist.

Yet, to be significant, these scientific results need to be analyzed with a triangulation method, incorporating stylistic and artistic research and the documents and literature available at Institut Restellini. This literature includes all the original collections and primary documents on Paul Guillaume and his photographic archives; on Roger Dutilleul, Jonas Netter, Jean Masurel, and many others. Their collections and documents deal with nearly the whole corpus of Modigliani's works, if we also add the ones shared by the late Noël Alexandre, a friend to whom I wish to express my gratitude.

For instance, it was from this exceptional documentation that I was able to send Barbara Buckley, Senior Director of Conservation at the Barnes Foundation, an image of the original photo from the Paul Guillaume Archives of the *(Portrait of) Béatrice Hastings* now in the Barnes Collection **(FIG. 5).** This original photo is illustrated in the excellent article in the April 2018 *Burlington Magazine* issue.[2]

This triangulation method is the only one that can guarantee reliable and solid work, without errors, on a catalogue raisonné.

Now comes a question that has been on my mind for twenty years. It is not one of controversy, but methodology: should we or should we not publish these fine scientific results?

As an illustration, I would like to give you two examples: one from the past and a more recent one. For the 1981 Modigliani exhibition at the Musée d'Art moderne de la Ville de Paris, the Patrimoine National published results from scientific analyses. This was the first interesting initiative of the kind, even if it is now outdated, regarding Modigliani. But an unfortunate error came out in the report: Titanium white was found in the preparation layer of *Antonia,* a portrait in the Orangerie Museum in

Amedeo Modigliani, *Béatrice*, oil on canvas, 55,2 x 38,2 cm, 1916

Early black-and-white photograph of *Béatrice* (Paul Guillaume Archives; © Institut Restellini, Paris)

FIGURES 5A and **B. A (left): Amedeo Modigliani. *Béatrice (Portrait de Béatrice Hastings)*,** 1916. Oil on canvas with newsprint, 55.2 x 38.2 cm (approx. 21 ¾" x 15"), The Barnes Foundation, Philadelphia. **B (right):** Early black-and-white photograph of Béatrice from the Paul Guillaume Archives.© Institut Restellini, Paris.

2 Barbara Buckley, Michael Duffy, Allison Langley, and Mina Porell, "The Modigliani Technical Research Study. Modigliani's Paris Portraits 1915-17," *The Burlington Magazine,* April 2018, No. 1381, Vol. 160, p. 312.

FIGURE 6. Amedeo Modigliani. *Antonia,* 1915. Oil on canvas, 82 x 46 cm (approx 32 ¼″ x 18 ⅛″). Musée de l'Orangerie, Paris. © RMN-Grand Palais / Art Resource, NY. Ph: Hervé Lewandowski.

Paris **(FIG. 6).** I can assure you, based on results we have in our files, that there is *absolutely* no titanium white in the original painting.

Such errors permanently give rise to the arrival of new fakes on the art scene. The issue was also discussed in the Genoa case, as we were given test results from extremely reliable laboratories stating that traces of titanium white existed in Norway, as early as 1895. I cannot tell you how many times we have had to speak up and explain that Modigliani was not Vermeer; he did not grind his pigments, but used tubes of paint sold by merchants, and that to have pigments brought from Norway to Paris, a city with tax counters at each city gate, deep in the context of World War I, would have been quite remarkable and most unlikely.

Another, and more recent example is the discovery of the portrait underlying the Tate Gallery's 1917 *Portrait of a Girl.*[3] It is, of course, a wonderful discovery, for which I warmly congratulate Nancy Ireson, co-curator of the Tate's Modigliani exhibition. I can also confirm that the underlying work represents Béatrice Hastings, which makes the finding all the more interesting.

Yet, I am concerned about a comment from the article in the *Burlington Magazine,* which reads that "Modigliani often reused canvases."[4] Here are my results based on statistics: only a dozen paintings out of more than four hundred were recycled by Modigliani or painted recto-verso.

Since the publication of the article, we have been repeatedly contacted by people regarding fake paintings that we previously reviewed and did not accept, because we think that the number of already pre-painted canvases re-used by Modigliani is very low.

From the elements of analyses we have in our files, we can state that this was quite an occasional practice. If we could have X-rays of all Modigliani's paintings, this would give us final evidence.

As a consequence, I have considered for some years already that such important scientific results should not be published, but rather, kept secret. I realize that this conflicts with—is completely contrary to—the very principle of scientific research, and I was often confronted with this belief. But whereas in the medical world a scientific discovery is protected when it is published, it is exactly the contrary in the art field. In the art world, publishing scientific results about a work may ultimately lead to its destruction. If we immediately publish our findings, we will provide forgers with the operating instructions to make fakes. I hereby call upon the scientific community's sense of responsibility to discard naïveté and weigh the consequences of the process, even if I am aware of and can understand the natural trend to publish.

A word about the catalogue raisonné I am working on. One word. Yes, it is completed. I am happy to announce that we are now at the layout stage. I am

[3] See, for example, Dalya Alberge, "Modigliani portrait comes to light beneath artist's later picture," *The Guardian,* February 28, 2018.

[4] See Annette King, Nancy Ireson, Simonetta Fraquelli, Joyce Townsend, "The Modigliani Technical Research Study. An introduction to Modigliani's materials and techniques," *The Burlington Magazine,* March 2018, No. 1380, Vol. 160.

aware of the expectations raised by this catalogue, but I try to focus on my biggest concern, which is to achieve the most perfect outcome possible.

I will conclude this overview on Modigliani with a word about future exhibitions.

As you may know, I have organized more than 140 exhibitions in my life, and regarding Modigliani, four retrospectives, among which the largest ever, in 2002, when I was director of the Musée du Luxembourg in Paris. I am constantly called to organize Modigliani exhibitions or retrospectives. I must confess that I am no longer interested in retrospectives. I believe I said everything I had to say at the time of the *Melancholy Angel (L'ange au visage grave)* in 2002, and that is why, for the past thirteen years, in my own museum, la Pinacothèque de Paris, I did not produce a single exhibit related to Modigliani. The essential part of what I have not yet told will be said in the upcoming catalogue raisonné.

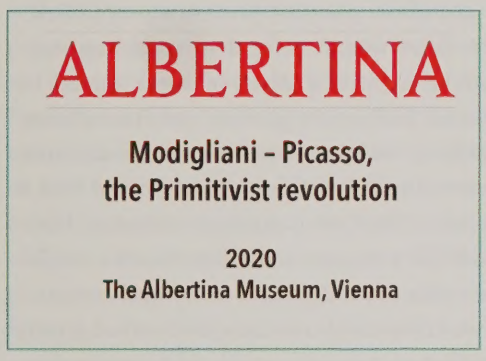


FIGURE 7. Upcoming exhibition 2020, organized by Marc Restellini and the Albertina Museum in Vienna.

"If we immediately publish our findings, we will provide forgers with the operating instructions to make fakes. I hereby call upon the scientific community's sense of responsibility to discard naïvete and weigh the consequences of the process, even if I am aware of and can understand the natural trend to publish."

There is, however, still one major subject I would like to work on. It is an absolutely essential project; the relationship between Modigliani and Picasso.

I have the immense pleasure of announcing that, for the 100th anniversary of Modigliani's death in 2020, I will organize, together with the Albertina Museum in Vienna, an exhibition entitled "Modigliani—Picasso, the Primitivist revolution" **(FIG. 7)**. For me, this is one of the most ambitious and exciting projects that can be considered about Modigliani.

• • •

CONT.

WHAT IS IT ABOUT MODIGLIANI?
Q&A

Q Sharon Flescher (SF), IFAR Executive Director/Moderator: Our four terrific speakers have provided much food for thought, so, I thank them. I am not sure, however, that I agree with Marc Restellini's comments about not publishing scientific information. I have heard the argument before, that publishing provides a blueprint for forgers. In IFAR's Art Authentication Research Service, however (which is almost 50 years old), we *do* write a report, and we give reasons for our opinions, based upon our research and on the opinions of our specialists, including the results of scientific tests. There is a way of writing these things so that they are less of a blueprint for forgers.

That said, am I correct in understanding that the Modigliani Technical Research Study spearheaded by the Tate is only for museum paintings and that the conservators and scientists within the museums are studying their *own* collections, or does it go beyond museum collections?

A Lena Stringari (LS): I don't think there is any reason that we wouldn't expand it. The project was limited to institutions because we know each other; we were able to get it moving very quickly; and we had access to the scientists. It is just the start, I think. The curators at the Tate were the impetus for it. I'm hoping that it will continue because we have many more works to look at. But I have to say that there were a few things in private collections that I wanted to see, and I wasn't able to. That is one of the reasons that this research happens in museums. The works that we examined in great depth were all included in the exhibition.

SF: Based on what Ken Wayne and Marc Restellini said in terms of their studies, there is a body of information that's already being amassed about the technical properties of Modigliani works, many of them in private collections. So, it would be nice if the information could be combined. Just a thought.

Q I am Jennifer Mass (JM) from Scientific Analysis of Fine Art and the Bard Graduate Center. I'm here with Barbara Buckley, a conservation scientist from the Barnes Foundation. We worked together studying the Modigliani painting at the Barnes. A critical part of the scientific process is peer review. I'd like to know what is being done regarding peer review of the scientific analysis of works that are in private hands before they go onto websites as being authenticated. We know that there are Modiglianis that came to the U.S. before and after World War II that are not in the Ceroni catalogue raisonné, but it's almost like a treasure hunt, like there's a magic bullet in terms of Modigliani's techniques, when, in fact, we know that his techniques evolved greatly over his lifetime. So, my question is about the peer review process for the catalogue raisonné.

A Kenneth Wayne (KW): As I mentioned in my talk, that is why we are doing it by committee. That's what we are considering our peer review. Very eminent people are part of our team; that's a built-in part of our process.

JM: A peer review is actually from an external group of scientists rather than from someone within your own team.

KW: We're happy to have the input of any expert who wants to be involved.

JM: Terrific.

Q SF: Are you really suggesting that for every catalogue raisonné, in addition to the conservators and scientists who may already be working on the team, the research needs to be examined by an outside team? There aren't a million people like you

ID = ISABELLE DUVERNOIS
SF = SHARON FLESCHER
MR = MARC RESTELLINI
LS = LENA STRINGARI
KW = KENNETH WAYNE

out there qualified to be doing the peer review of other people's work.

A **JM:** This is exactly how it's done in all other fields of the sciences, whether chemical, physical, or biological. I'm not saying that all of the peer review should be done by one group, but there are a large number of scientists that work in museums throughout the U.S. and Europe that could participate in this process.

SF: Interesting.

KW: I want to respond to the previous point about not publishing scientific results. I agree with Sharon completely. The publishing needs to be done. It should be done. The reason, as I mentioned before, is that there are three elements to validating a painting, and only one of them is scientific analysis. There's also connoisseurial and provenance. Provenance is key to the process. We're not aware of many Modigliani works that appear in 1990 or 2000 or 2010 with no previous history, no references, no exhibitions, that turn out to be correct. Almost all of them have some connection to pre-WWII. Modigliani was famous during his lifetime. He was really famous in the 1920s. He was exhibited a lot. He was written about a lot. His works were reproduced in magazines and exhibition catalogues. One has to dig down deep, but you can usually find a reference from before WWII. That's why I don't think that it's a risk to publish scientific information in *Burlington Magazine* or elsewhere and that someone will use that to go out and make a Modigliani. I just don't think it's possible, especially when they're mentioning canvas weave and how they are finding matches between paintings, and things like that. How can you recreate canvas weave? It's very fine. It's very specific. There is just no way you could do that. So, I'm not worried about scientific results somehow undermining the field.

Q **SF:** Obviously, the corollary of incorrect scientific results, like the titanium dioxide example, can infect scholarship from then on if people simply borrow incorrect information. That, I think, is a different issue than the other. Do you disagree, Marc?

A **Marc Restellini (MR):** Scientific analysis is, of course, very important and very interesting. But it must not be the only element determining whether a painting is fake or genuine. If you start to work in that way, you're going to war. The problem with scientific analysis is not always the *result*. It is the interpretation of the result and what you can deduct from the result you have. Anybody can give conclusions to scientific analysis. So the issue, it seems to me, is that it is important to be very careful. This is why I am extremely worried about the number of laboratories that have emerged in the past 5 or 10 years and promise miracles. Those of these laboratories who claim they can determine whether a painting said to be by Modigliani or any other artist is fake or genuine, basing their opinion on scientific analysis alone, are liars. Never work with such people.

> "The problem with scientific analysis is not always the *result*. It is the interpretation of the result and what you can deduct from the result you have."
>
> —Marc Restellini

The question of triangulation for me is very important. But, again, the problem is the publications. As in the example I gave in my talk: You can have very good people doing a very good job, but, you don't know why, there is a mistake in the report. That can be a typographical mistake, for example, or a copy/paste made too quickly. These mistakes create problems, because, you must understand, the forgers read these analyses too. They are the first ones to read them because they will use any mistake published. It is in their blood. So this is why I want to be careful with that. It is like medicine. You can judge if somebody is in good health when you have hundreds of examples of people who are sick, if you have the X-rays. If you know how a person is when in good health, or if he has a symptom of something, it's because you know how he compares with others. The problem is that when people commission a big scientific report, they say, what do I do now? I don't understand it. Of course, they don't

understand it, because they can't draw any conclusions from it. This is really dangerous.

Q **SF:** Do our conservators want to comment on that?

A **Isabelle Duvernois (ID):** That is one of the reasons why we don't *only* look at the results of analysis, but we also look at the pictures, for a very long time. We were trying to convey this to you. Looking at artwork, spending hours examining a work under the microscope, and/or with our eyes, educates us. This is very much part of it. That is what comes first. It is not just one thing or the other. It's a combination of educating our eyes, educating ourselves about the history and the provenance of the artwork. We only get to this by doing a lot of looking.

"That is one of the reasons why we don't *only* look at the results of analysis, but we also look at the pictures, for a very long time."
—Isabelle Duvernois

SF: Plus, obviously, the paintings you were working on are in major museum collections with a long history. These are known works. They aren't unknown works that just turned up, to use Ken Wayne's phrase, post 2010, out of the blue. So, there is already a general acceptance of the work.

LS: I agree with Isabelle. I've had this conversation many, many times over the course of my career. When an exhibition takes place, that is when we have an opportunity to view and compare works. The more people that can get together and do that close looking, that's when we discover the most. Yes, a forger may get a recipe. But there is a touch that certain artists have, and if you know the artist's work, if you've looked at enough of it, I can't say that you can authenticate it, but you certainly have a very good idea of what you're looking at. I am somewhat skeptical about scientific analysis, but I utilize it, because I look and I ask questions, and I have the analysis done to answer those questions. Then it turns around and goes the other way—the science can raise more questions. So, it's not something that we take lightly.

SF: We always say that the study of scientific and material properties can expose an inauthentic work, but will almost never in and of itself be able to show that a work is *authentic*. These are in a way two different processes. Telltale anomalous or anachronistic pigments may expose the work as a fake. But just because materials are *consistent* with an artist's lifetime or even with artist's methods doesn't necessarily make that work by the artist. People who submit works to IFAR misunderstand this all the time. Often, they come with enormous packets of tests they've had done before they even submit the work to us. In fact, there seems to be an inverse proportion; the bigger the packet, the less likely the work is by the artist to whom the owner would love to have it attributed. But, in any case, the tests are almost never going to prove the work authentic. At best, they will show that it's consistent with the artist, unless the artist literally made his own materials, or whatever. And even then, even Vermeer, who made his own paints, was faked.

Q Modigliani fakes, in general, are done very poorly. Anybody in the art business could see right away that the Genoa pieces were fake. The first time I saw them, I laughed. My question to the panel is, how is it possible that museum curators couldn't see that? Is it politics? What is it? I feel bad, actually, that Mr. Restellini didn't show some of the Genoa fakes and compare them with the original works. It was so obvious. Any art student could see it. This is Question No. 1. Question No. 2 is this: It is a fact that in 1910 there were at least a hundred merchants in Paris that mixed their own white colors, that is, titanium white, and they used to sell it in Paris. It's a known fact that titanium white is present in Picasso paintings from that era. How come nobody talks about this? If somebody can answer, first, the issues with Genoa. How come nobody recognized the fakes? And secondly, titanium white.

SF: As to the first question, didn't Marc Restellini recognize them as fakes and speak out?

Q **(cont.)** What about titanium white? Stating again, this is a fact; nobody explored it and

nobody talked about it. And it's there. Many scientists before the late 1920s or '30s talked about titanium white.

SF: I'm not aware of titanium white being available that early, but there are other people here who have more knowledge about this than I. You are acting as if this is a well-known fact. I'm not sure that it is even a fact. Does anyone on the panel want to tackle this?

A **MR:** The titanium question is very simple. There is no titanium white before 1922-25.

Q **(cont.)** A 1914 Diego Rivera portrait has titanium white in it. And it is known that many Modigliani pieces have titanium white.

LS: I think we should ask one of our scientists.

SF: We have more than one scientist in the audience. Not to put you on the spot, but do any of you have knowledge of this?

A **Silvia Centeno (SC):** I'm Silvia Centeno, a scientist at the Metropolitan Museum. Titanium dioxide is a common component of many natural clays. So finding titanium dioxide, and I'm not talking about this particular case, is not equal to having a fake. If you see it in the context of clay use in objects, it doesn't necessarily mean that it's a fake.

A **Jennifer Mass (JM):** I'd like to emphasize what Silvia Centeno said. You *do* see titanium white in very small quantities as a result of it being a naturally occurring mineral in clays. But when you have larger concentrations of titanium white, Marc Restellini is right, that this happens after 1920. Even up to 1925, these very early titanium whites are co-precipitates. They have barium sulfate and calcium sulfate combined with them. So, the early titanium whites can be very easily recognized, rather than a forgery, which typically uses a pure titanium white of the type typically that was available after WWII.

SF: We're getting very technical, but that is really interesting.

LS: This speaks to the issue that Marc was referring to: interpretation. You can do as much scientific analysis as you want, but if someone doesn't know what they're looking at or cannot interpret the results, then you don't really have anything.

ID: One could be sampling on a repair or some area of contamination. There are so many ways contamination can find its way on a painted surface. You can easily encounter something completely idiosyncratic or out of date. It's easy to rush to conclusions that are completely wrong. We have to parse everything and look again and possibly use three different methods to identify and verify the presence of certain components.

Q **SF:** I want follow up on something that Marc Restellini said in his talk, because I have a feeling that many people in the audience didn't understand the right – the *droit d'expert* – that the French court gave him to speak out, for example, in Genoa about the fakes. Marc, can you please explain the *droit d'expert*?

A **MR:** The French court gave me the *droit d'expert,* the obligation to make a denunciation if I am in front of a fake, and it protects me. This means that if I declare a painting is a fake, the burden of proof is not mine. It belongs to the others. As there is no *droit moral* with Modigliani, if you say a work is a fake, you can be sued. But they can't sue me because I have the *droit d'expert.*

Q **SF:** Does that extend throughout Europe? Throughout the world? What is the range of that right?

A **MR:** It's a French court ruling. In France I'm totally protected, and also in Italy, because it is almost the same legislation. If you want to know the history of this right, it was given without my requesting it. In 2005 I went to Venice for the Biennale. There was an exhibition in the Marciana library (Biblioteca Marciana) organized by Mr. Christian Parisot, and I declared that 80% of the paintings were fakes. I made the declaration at a party with the Minister of Culture and the Mayor of Venice. There were also journalists. The next day they called me and said, oh you think 80% of the exhibition is fake? I said yes. The following day, the

first page of the *Corriere della Sera* said there were "Fake Modiglianis" ("Falsi Modigliani," June 2005). But at the time, the regulations in Italy said that the only person who could make a complaint about fakes was the owner of the paintings. Of course, the owner of the fakes would not sue because he had fakes. One year later, the paintings were seized, and the following year, they were given back to the owners. Parisot sued me in France for defamation for what I said. It was normal. I would have done the same if I were he. In the lower court, he won only on one issue, the Internet publications. He didn't win on the others. I was sentenced symbolically to one year. Of course, I appealed. On appeal, I won also on the Internet issue. At the end, the judge gave me the *droit d'expert* without my requesting this right. I didn't understand it at the beginning because he said, "Considering the knowledge of Mr. Restellini, he was right to say the works were fake. This is his duty, his obligation, and this court gives him the obligation in the future to denounce any fakes he will see." My lawyer told me, "Do you see what you have in your hand?" I replied, "No, what is it?" He said, "You have real power." I never used it except for the Genoa case, but in that case, it was just too much, so I used this right. That is why the Genoese prosecutors listened to me, closed the exhibition and seized 21 paintings. That's the story.

"We think there are 50–60 paintings that should be added to Ceroni. That's about 15% of Modigliani's *oeuvre.*"
—Kenneth Wayne

Q As long as the auction houses will not accept a painting that is not in the Ceroni catalogue raisonné, is that not the basic problem with the acceptance of a "Modigliani" as a Modigliani? As long as Ceroni is the bible for authentication, is that not the fundamental issue?

KW: I would say that it is in everyone's interest for works to be validated, for art historians, for the auction houses, for everyone with an interest in Modigliani and modern art. So, there's that. I mentioned before that we think there are 50–60 paintings that should be added to Ceroni. That's about 15% of Modigliani's *oeuvre.* So that's a fair amount, obviously. If you're judging an artist's work, you want to judge it on their whole body of work. What I've heard from the auction houses is that they will accept the opinion of a committee, of a group. Not an individual. That's what I've heard. I can't speak for them, obviously, but perhaps they would accept a work, and they *do* accept works that are not in Ceroni if there are special circumstances. For example, the sculpture I referred to that sold in 2010. I wrote the auction entry for it. It was not in Ceroni, but it *was* reproduced in a newspaper during Modigliani's lifetime. That's better than Ceroni. People called me, collectors called me, and said, "Why isn't it in Ceroni?" I said, "That doesn't really matter. Having it reproduced in the newspaper three times during Modigliani's lifetime is pretty darn good." Moreover, it was bought early on by a friend of Modigliani, someone who knew him directly. So, there is a history. That's what I mean, that when there is verifiable provenance, it helps a lot. So, we'll see.

Q **SF:** Presumably, when the two catalogues raisonnés that our panelists are working on come out, more works than are in Ceroni will be accepted by the auction houses. We have many auction people in the audience. Am I wrong? Is that not what we can assume will happen?

A My name is David Nash (former Executive Vice President, Sotheby's and Co-President of Mitchell-Innes and Nash). In answer to your question, Sharon, I think that the auction houses and galleries generally choose the easy way out. It's not in their interest to take a stand on authenticity if it's going to cost them legal fees in the future.

Q **SF:** But if a new catalogue raisonné comes out that's accepted as good, as opposed to, say, what happened with the Parisot catalogue raisonné, which, let's say, was troubled, would that not expand Modigliani's body of work? It's like a supplement to a good catalogue raisonné. What would really be the difference if the new publications are accepted as good catalogues raisonnés?

A DN: That's the issue. In fact, I believe IFAR once had a panel on judging the experts.[1] I think the strength and validity of any future catalogue raisonné will depend on how it's received. Some catalogues raisonnés that come out are not accepted by everybody.

Q I would like to shift the conversation away from the financial and the legal because the other, and I hope the primary, reason for doing a catalogue raisonné is to understand the creative imagination of a particular artist. Since each of you has looked at different aspects – technical, connoisseurship, provenance – how would you see that research bearing on your sense of who this artist is?

SF: I want to interject that the person who asked that question is working on a catalogue raisonné herself.

A KW: I would say that it expands your sense of what the possibilities are. Ceroni has great status, and well deserved, although we don't know what his methodologies were. I don't know that he ever used X-ray or infrared. From what I've seen, he used photographs, presumably black and white photographs. So, I would like to know more about what he used to make his determinations. But, as I mentioned, he says in the 1970 edition of his catalogue raisonné that he expects other works will emerge and be accepted, that his book was *not* comprehensive. It just shows you can't rely on one source.

Q (cont.): I'm sorry. I'm not clearly expressing what I'm asking, which is, could you speak a bit about what you see in terms of a creative imagination, an original artistic mind that has been enriched by all the looking you've done, whether it be scientific or documentarian.

A KW: I've worked on Modigliani for more than 30 years, and I haven't gotten bored, because every time I look at his work, I see something that I haven't seen before. It recalls Renaissance portraiture, Gauguin, Picasso, African masks, Oceanic, Cycladic, a range of sources. You can see those sources were on his mind when he was creating. He weaves that into his art. I find that fascinating. For me, this underscores his sophistication, that he was a very sophisticated person who thought about a lot of different art forms, not just the Italian tradition, not just the French tradition, but a variety of sources.

LS: Over the years, I've seen catalogues raisonnés becoming more sophisticated. I've never seen as many scholars looking at things as closely as they do now, so, something has changed. We now take the backings off paintings when preparing a catalogue raisonné, and that didn't happen before. Previously, people were not looking under the sculpture or behind the stretcher. We're closer to the actual process, the working methods of the artist, being close to the studio process of the artist, as opposed to looking at an image which can be misinterpreted. We are learning from the actual objects. That's been an evolution. I've seen it happen over the years.

> "Over the years, I've seen catalogues raisonnés becoming more sophisticated. … We now take the backings off paintings when people are preparing a catalogue raisonné, and that didn't happen before."
>
> —Lena Stringari

KW: Right. A collector brought me a beautiful caryatid figure, watercolor on paper, that had been in his family since 1922. It had been acquired by his great aunt at the Brummer Gallery in New York. I looked at it. My immediate reaction was, this looks good, this looks very good. I said, "This is an old-looking frame. Have you ever taken it out of the frame?" He responded, "No, not as far as I know." It was taken out of the frame, and on the back of the caryatid was a stamp "Galerie Paul Guillaume," Modigliani's dealer. That kind of settled it, removed any little doubt. He ended up selling it through Christie's. So looking at works out of the frame can be very instructive.

ID: The looking that we do is really looking at the artist's hand. What was quite interesting for me and especially when attending that study day at Tate,

1 "Who Judges the Experts?", part of "Catalogues Raisonnés and the Authentication Process," an IFAR conference, December 2001, reprinted in the *IFAR Journal*, Vol. 8, nos. 3&4, 2006.

speaking with colleagues who did other in-depth research of the early works, for instance, was to see Modigliani's striking trajectory. From the beginning, from the almost belabored works, where he goes at it again and again, scratching, going back, and scraping again, like any younger artist would, and then, how, gradually, he starts to move away and is just forming his own style and moving towards a lighter and lighter touch. Like many artists, his later works are probably the most transparent. I mean, he does not need to use many strokes. The facility he has is so exquisite towards the end. It's really poignant to be able to trace that.

Q **SF:** Marc, do you have something you want to add to that?

A **MR:** Modigliani is not a simple person. The research and experience you have every day with Modigliani brings you deeply into his character. So, of course, I don't have the same vision of Modigliani today as I had 20 or 30 years ago. But it's like acting, I think. The more you know a painter, the more you can imagine his reactions, what he was thinking, and that helps you to understand his work. So this is why also it is important to include the human part of the artist into the triangulation, to understand why he did that at this moment. For example, the nude being sold at Sotheby's (*Nu Couché* of 1917) is a very interesting painting. The style of this painting is very different. Why? We do have the answer. I know why.

Q **SF:** Why?

A **MR:** You have to wait until publication. We have a lot of information for these paintings that no one knows about. For example, we explain the reason why Modigliani made these paintings at that time. I'm on this panel with two people who work on the nudes. They can confirm to you that the style of this Sotheby's painting is extremely different. Why did he paint that like this? There are reasons; of course there are. But you can understand them only if you know Modigliani and if you make the triangulation. So, you will have to wait until publication.

SF: Sorry, guys, you're not going to get that answer here at our program, apparently.

MR: I already said too much.

SF: I don't think that in any way your speaking here will siphon off the desire to read what you will publish.

Q I've worked with many artists for periods of between 30 and 40 years. One thing I can assure you is that there is nothing evolutionary about the development of an artist. I can't tell you the number of times I've felt like an idiot in a studio with artists. I see something an artist does now, and I don't recognize it. It seems out of whack. It seems like something they could have done 30 years ago. It's very difficult to make an assertion that you can be an expert and *know.* You can do the best you can, of course, and I love the triangulation of provenance and scientific research and looking. But all three are porous. Looking is the most porous of all. An artist can fool you immensely.

SF: That sounds like the topic of a whole other conversation.

A **LS:** I think it *is* a discussion, and I totally agree. I make art. I can tell you that you have bad days and you have good days. You go back. I do think that the more you look at an artist's *oeuvre,* the better you understand them. That's just clear. There is a lot of art history created and written by people who haven't looked at the art. A highly respected art historian wrote something about a painting that had been destroyed and he'd never seen. It sounded like he had looked at the picture, but the picture didn't actually exist. Looking is really important. But I agree with you that you don't always know. I'm not an expert on Modigliani, and I'm not saying that I am. But I do think you have to ask yourself all along, what are you looking at? Could this be idiosyncratic? Artists are artists because they do things that we don't expect.

SF: But that doesn't mean that expertise doesn't matter, which is the flip side of what I think I was hearing the questioner say. … Perhaps this is the right moment to thank our wonderful speakers and everyone for coming and invite you to join us at the reception.

• • •

SCENES FROM AN IFAR EVENING

Speaker Kenneth Wayne with three Modigliani images.

Sharon Flescher,
IFAR's Executive Director.

Frederick and Marie-Claude Butler.

The four speakers, left to right: Marc Restellini, Kenneth Wayne, Lena Stringari, and Isabelle Duvernois.

Patricia Ross, Vivian Ebersman,
and Anthony Williams, IFAR Chairman.

John Tancock and
David Nash, IFAR Board member.

Dean Chapman and Jana Farmer.

Silvia Centeno asking a question.

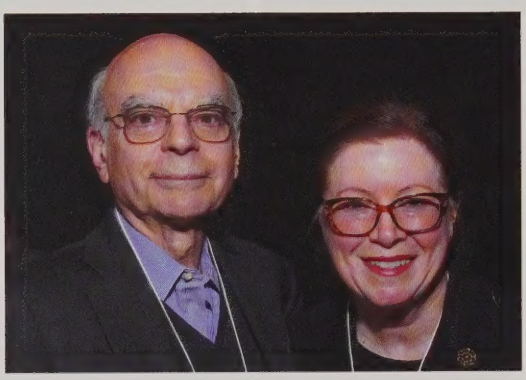
CONT.

WHAT IS IT ABOUT MODIGLIANI?

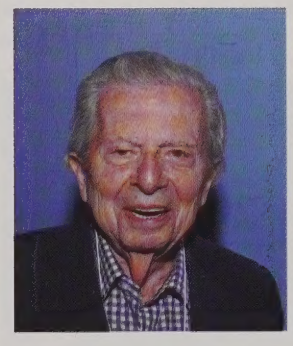
Left to right: Simon Rosenthal, Pascal Zay, Leslie Koot, Olivia Mattis, Mason Klein, and Stephen Brown.

John Adams.

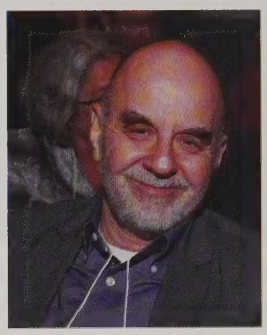
Barbara Buckley.



Jack Flam and Denyse Montegut.

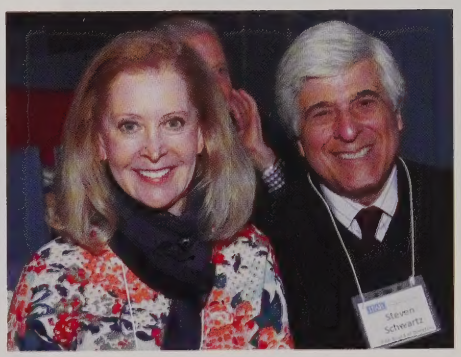


Milton Esterow.



Kenneth Silver.

Adam Finnefrock, Jennifer Mass, Curtis McConnell, and Anne Fifield.



Lauren and Steven Schwartz, IFAR Board member.

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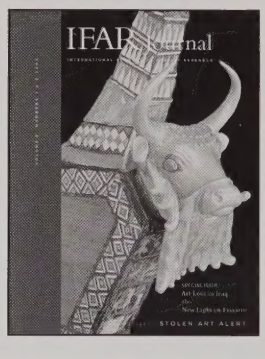

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- *Art Research News*, 1980 -1984: Vols. 1-3
- *Stolen Art Alert*, 1980 -1984: Vols. 1-5, 10 issues per volume
- *Art Theft Archive*, 1979: 1 volume, 10 issues
- *1977 Index of Stolen Art:* 1 bound volume

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The photo of each item is accompanied by a brief description of the work, the ALR catalogue number, if registered, and the date and place of theft. An asterisk before the catalogue number means that a photograph of the stolen work is available, although not necessarily included in this issue.

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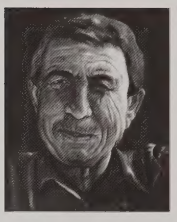
STOLEN ART

PAINTINGS

1. **LAUDI ABILAMA** (Lebanese, born 1986). ***Ana Ahmad,*** 2013. Oil and acrylic on canvas. 46 x 38 cm (approx. 18 ⅛″ x 15″). *L18.818. Stolen from a storage facility in London, England on October 20, 2014.



1

2. **JACK ARMSTRONG** (American, born 1957). ***Steve McQueen Le Mans.*** The work was inspired by the actor Steve McQueen's 1971 film Le Mans, based on 24 hours at the racetrack.*L18.895. Stolen from a private residence while on loan in Dallas, TX on May 3, 2018.

2

3. **RAY SLOAN BREDIN** (American, 1880-1933). ***Study of Alice Price Bredin.*** Oil on board. 20.32 x 25.4 cm (8″ x 10″). On the verso of the frame, at center, is a thumbtack hole where a detailed provenance for the painting was pinned. *L18.1091. Stolen in New York, NY prior to June 8, 2018.

3

4. **SERGEI BONGART** (Ukrainian/American, 1918-1985). ***Still Life with Flowers,*** c. 1965-1975. Oil on board. 101.6 x 76.2 cm (40" x 30"). *L18.1029. Stolen from a storage facility in Pasadena, CA on May 27, 2018.

4

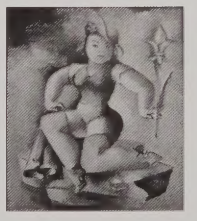
5. **FREDERIC EDWIN CHURCH** (American, 1826-1900). ***"Sunrise" Irvington, Hudson River.*** Oil on canvas. *L18.1199. Stolen in Waterville, Ireland on April 15, 2018.

5

6. **SUZANNE EISENDIECK** (German, 1906-1998). ***Woman Seated in Park with Gloves and Parasol.*** Oil painting. 121.92 x 91.44 cm (48″ x 36″). *L18.613. Stolen in transit between Florida, U.S. and Montreal, Canada on May 24, 2014.

6

7. **MARTA HEGEMANN** (German, 1894-1970). ***Untitled,*** 1931. Oil on canvas. 54 x 46.99 cm (approx. a21 ¼″ x 18 ½″). *L18.475. Stolen from a private residence in Asbach, Germany on December 1, 2006.



7

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* Numbering for the Volume 19 Cumulative Index of Stolen Art begins with this issue.

8

9

8. **HECTOR HYPPOLITE** (Haitian, 1894-1948) ***Untitled (Birds and Flowers),*** c. 1946-47. Oil on canvas. 50.16 x 59.66 cm (approx. 19 ¾″ x 23 ½″). *L18.977. Stolen from a storage facility in Brooklyn, NY on August 1, 2015.

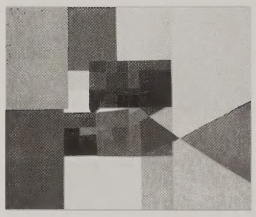
9. **ELISABETH LALOUSCHEK** (Austrian, born 1955). ***Untitled,*** 2000. Acrylic on canvas. 168 x 152 cm (approx. 66 ⅛″ x 59 ¾″). *L18.792. One of two paintings stolen from a storage facility in London, England on January 19, 2017.

10. **JAMES LATHAM** (Irish, 1696-1747) ***Portrait of a Lady Holding a Rose,*** 1720. See color photo on inside back cover.

11. **MAESTRO OF FAENZA,** Sec. XIII (Italian, 13th century). ***Crucifixion and Descent into Limbo.*** See color photo on inside back cover.

12

13



12. **BERNARD MENINSKY** (Ukrainian/English, 1891-1950). ***Portrait of Elsie Few.*** Oil on canvas. 150 x 80 cm (approx. 59″ x 31 ½″). *L18.1049. Stolen from a private residence in London, England on May 7, 1989.

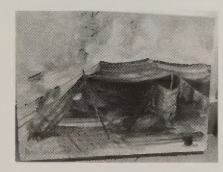
13. **HELEN SEIBERT** (American, 1914-1987). ***Rock by the Shore,*** 1944. Oil on canvas. 76.2 x 91.44 cm (30″ x 36″). On the verso of the stretcher: Inv. no. DFA0499. *L18.546. Stolen from a gallery in West Hollywood, CA on October 1, 2017.

14. **PAUL SIGNAC** (French, 1863-1935). ***Le Port de la Rochelle,*** 1915. See color photo on inside back cover.

15. **NICOLAS DE STAEL** (French, 1914-1955). ***Le Fort Carré à Antibes,*** 1955. See color photo on inside back cover.

The following six paintings by **MICHELLE PEARSON COOPER** (English, contemporary) were stolen from a gallery in Marrakech, Morocco on September 1, 2014. *L18.749:

16



17

18

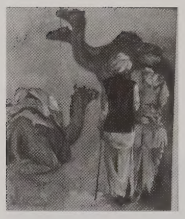
16. ***Bedouin Tent,*** 2009. Oii on canvas. 25.4 x 35.56 cm (10″ x 14″). Signed l/l.

17. ***The Caravan,*** 2009. Oil on canvas. 132.08 x 261.62 cm (52″ x 103″). Signed l/r.

18. ***Drifting Sands,*** 2009. Oil canvas. 55.88 x 45.72 cm (22″ x 18″). Signed l/l.

STOLEN ART

19. ***Pushkar Camel Traders,*** 2007. Oil on canvas. 40.64 x 33.02 cm (16″ x 13″). Signed l/l.



19

20. ***Rahgu's Wedding,*** 2008. Oil on board. 40.64 x 30.48 cm (16″ x 12″). Signed l/r.

20

21. ***Tuareg in the Saddle,*** 2009. Oil on panel. 55.88 x 50.8 cm (22″ x 20″). Signed l/l.

21

22. ***Tuareg III,*** 2008. Oil on canvas. 30.48 x 30.48 cm (12″ x 12″).

22

The following two paintings by **EJNAR HANSEN** (Danish/American, 1884-1965) were stolen from a private residence in Los Angeles, CA on April 3, 2018. *L18.733:

23. ***Portrait of Helga***. Oil on canvas. 63.5 x 53.34 cm (approx. 25′ x 21″). Signed l/l. 63.5 x 53.34 cm (approx. 25″ x 21″).

23

24. ***Still Life (Flowers in a Vase)***. Oil painting. 71.12 x 38.1 cm (28″ x 15″).

24

The following two paintings were stolen in Monza, Italy in April 2017 when thieves posing as buyers – one disguised as a "diplomat rabbi" – met with the owner of an art gallery. During the meeting, the thieves loaded the paintings into a car and drove away. In June, Italian police arrested five suspects, but the paintings are still missing. *L18.697:

25. **PIERRE-AUGUSTE RENOIR** (French, 1841-1919). ***Girls on the Lawn.*** Oil on canvas. 39 x 46.5 cm (appox. 15 ¼″ x 18 ¼″).

25

RECOVERED

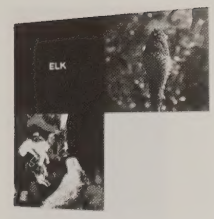
26. **PETER PAUL RUBENS** (Flemish, 1577-1640). ***The Holy Family with St. Anne.*** See color photo on inside back cover.

MINIATURES

27. **GILLIE HOYTE BYRAM** (British, contemporary). ***Saints Edmund and Edward,*** 2001. Enamel on 18 kt gold. 12.8 x 7.8 cm (approx. 5″ x 3″). A reworking of the Wilton Diptych from the 14th century. *L18.774. Stolen from the Devon Guild of Craftsmen, Bovy Tracey, Newton Abbot, England on April 5, 2018.

27

MIXED MEDIA



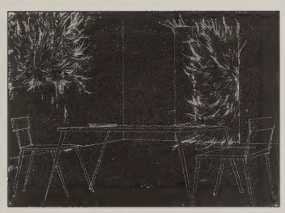
28

28. **JOHN BALDESSARI** (American, born 1931). ***Elbow Series – Elk,*** 2000. Inkjet print on canvas, folio D process on vinyl, hand lettering and acrylic on canvas, in three parts. Triptych. 106.68 x 106.68 cm (42″ x 42″). *L18.512. Stolen from a private residence in Studio City, CA on March 23, 2018.

29

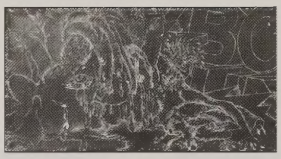
29. **TONE** (Canadian, contemporary). ***The Crane.*** Mixed media painting. 76.2 x 152.4 cm (30″ x 60″). *L18.102. One of more than 20 works stolen from a gallery in Saint-Denis, Montreal, Canada on January 8, 2018.

The following four mixed media works by **JOSEF BOLF** (Czech, born 1971) were stolen from the artist's studio in Prague, the Czech Republic on April 1, 2018. *L18.791. See item nos. 47 and 48 below:



30

30. ***Interior,*** 2006. Oil, wax and ink on canvas. 21 x 29 cm (approx. 8 ¼″ x 11 ⅜″).



31

31. ***Something,*** 2006. Oil and ink on canvas. 22 x 41 cm (approx. 8 ¾″16 ⅛″).

32

32. ***Storm,*** 2006. Oil and ink on canvas. 24 x 31 cm (approx. 9 38″ x 12 ¼″).

33

33. ***Trunk,*** 2006. Oil and ink on canvas. 20 x 40 cm (approx. 7 ¾″ x 15 ¾″).

The following two works by **OTTO PIENE** (German, 1928-2014) were stolen from a warehouse in Ashcheim, Germany on May 3, 2018. *L18.1008:

34

34. ***Rainbow-Zone,*** 1975. Acrylic with traces of soot on board in a glass frame.. 99.49 x 68.99 cm (approx. 39 ⅛″ x 27 ⅛″). On the verso, paper strips are glued all around the edge.

35

35. ***Untitled,*** 1973. 68 x 97 cm (26 ¾″ x 38 ⅛″).

WORKS ON PAPER

36. **HANS HOFMANN** (German/American, 1880-1966). ***Nude Study,*** 1935. See color photo on inside back cover.

37

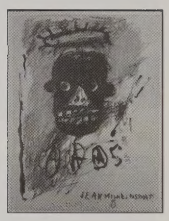
37. **WILLIAM WYLD** (English, 1806-1889). ***Untitled,*** 1835. Watercolor on paper. 25 x 35 cm (approx. 9 ¾″ x 12 ¾″). *L18.796. Stolen from an antiques fair in Sussex, England on February 25, 2018.

STOLEN ART

The following two drawings by **JEAN-MICHEL BASQUIAT** (American, 1960-1988) were stolen in New York, NY on March 12, 2018. *L18.740:

38. ***Mummy,*** ca 1980s. See color photo on inside back cover.

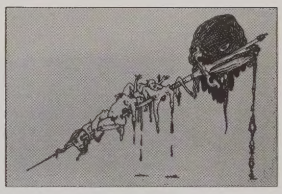
39. ***Self-Portrait,*** c. 1980s. Drawing on paper. 29 x 34.49 cm (approx. 11 ½″ x 13 ½″).



39

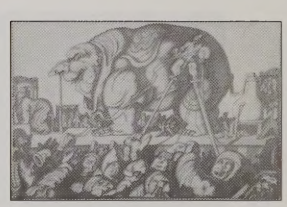
The following two drawings were stolen from a private residence in Selsley, England on February 15, 2018. *L18.952:

40. **HARRY CLARKE** (Irish, 1889-1931). ***Book illustration,*** 1925. Pen and ink on board. 8 x 11 cm (approx. 3 ⅛″ x 4 ¼″0. Signed l/r with a capital "C".



40

41. **ALAN ELSDEN ODLE** (English, 1888-1948). ***Carnival Scene,*** 1920. Pencil drawing. 38 x 54 cm (approx. 15′ x 21 ¼″).



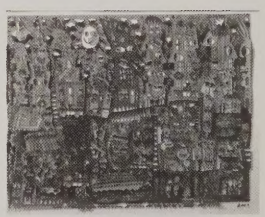
41

PRINTS, LITHOGRAPHS, ETCHINGS

42. **THEODOR SEUSS GEISEL** (Dr. Seuss) (American, 1904-1991). ***My Petunia Can Lick Your Geranium.*** Serigraph on canvas. 68.58 x 86.36 cm (27″ x 34″). Ed no. 38/55 CP authorized works. Signed l/r: Dr. Seuss. *L18.901. Stolen in transit from Erlangen, Germany to Hamilton, Ont., Canada on April 9, 2018.

42

43. **JAMES RIZZI** (American, 1950-2011). ***Life is Fun and Sometimes Dumb,*** 2007. 3-D graphic on paper. 48.1 x 54.1 cm (). Ed. no. 313/350. *L18.1086. Stolen in transit from Osnabrück, Germany to Bad Säckingen, Germany on May 22, 2017.



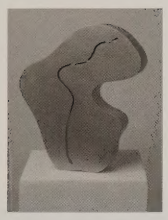
43

ICONS

44. **Unknown Artist** (Russian, 19th century). ***Saint Olga,*** 1889. Oil paint on brass. Ed. no: E2511. *L18.956. Stolen from a museum in Stuttgart, Germany on May 9, 2018. Inscribed in Cyrillic letters on the frame: Commemorating 25 years of Her Majesty's reign on Wuerttemberg's throne/this Holy Picture erected for the support of the Orthodox court church in Stuttgart/and Her Majesty Queen Olga Mikolayevna presented on the day of the anniversary 13/25 July 1889.

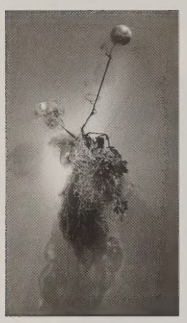
44

SCULPTURE



45

45. **JEAN (HANS) ARP** (German/Fench, 1886-1966). ***Far from the Taut Cord [Far from the Tightrope],*** c. 1962-1982. Aluminum (Duralumin). 30.51 x 26.49 x 5.99 cm (approx. 12″ x 10 ⅜″ x 2 ⅜″). Ed. no. 3/5. Cast by Mounier, Clamart, France. *L18.582. Stolen in transit in Berlin, Germany on January 1, 2012.



46

46. **RINA BANERJEE** (Indian, born 1963). ***From the Plantation Secret Texts Translated and Plagiarized,*** 2010. A hanging relief made of light bulbs, tulle, cotton rope, cowries shells, silver wire, glob, thread shells, brown vials. The work was in an original box from Haunch of Venison measuring 60″ x 36″ x 4″ and marked: HV 32387.177.8 x 81.28 x 81.28 cm (70″ x 32″ x 32″). *L18.780. Stolen from a gallery in Greenwich, CT on March 28, 2018.

The following two items by **JOSEF BOLF** (Czech, born 1971) were among six works stolen from the artist's studio in Prague, the Czech Republic on April 1, 2018. *L18.791. See item nos. 30-33 above:

47

48

47. ***Boy Marionette,*** 2010. Mixed media. 59.99 x 10 x 10 cm (approx. 23 ½″ x 4″ x 4″).

48. ***Girl Marionette,*** 2010. Mixed media. 59.99 x 10 x 10 cm (approx. 23 ½″ x 4″ x 4″).

The following two crosses by **SALVADOR DALÍ** (Spanish, 1904-1989) were stolen in Aachen, Germany on March 20, 2018. *L18.881:

49

50

49. ***Croix,*** 1956. 18 kt gold. Ed. no. 22/300. Inv. no. 3280. Literature: Sahli, Charles (Hrsg.), Salvador Dali. 257 editions originales 1964-1985, Paris. 1985 Abb. Nr. 246.

50. ***Soleil Glorieux,*** 1967. 18 kt gold. 19.99 x 18.01 cm (approx. 7 34″ x 7″ x 3 ½″). Ed. no. 3/300. Inv. no. 3279./ Literature: Sahli, Charles (Hrsg.), Salvador Dali. 257 editions originales 1964-1985. Paris, 1985, Abb. Nr. 249.

51

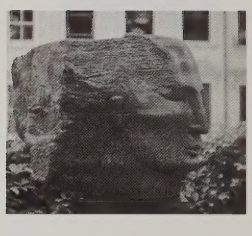
51. **JOHN KING** (English, 1929-2014). ***Horse Carrying a Dead Stag.*** Bronze. Ed. no. 8/10. *L18.481. Stolen from a private residence in Stroud, England on November 25, 2017.

STOLEN ART

52. **OSCAR MIESTCHANINOFF** (Russian, 1884-1956). ***Bust of a Woman with a Braid,*** 1914. Bronze. 80.01 x 49.99 x 30 cm (approx. 31 ½″ x 19 ¾″ x 11 ¾″). Signed. Ed. no. 1. Inscription: Cast Cire Perdue by Valsuani. *L18.646. Stolen in transit in Parma, Italy on March 12, 2018.

52

53. **EMILY YOUNG** (English, born 1951). ***Angel,*** 2001. Blue Purbeck marble. 80.01 x 80.01 x 65 cm (approx. 31 ½″ x 31 ½″ x 25 ½″). *L18.692. Stolen from a private residence in London, England on March 28, 2018.



53

54. **ANDERS LEONARD ZORN** (Swedish, 1860-1920) ***Morgonbad (Morning Bath),*** 1920. Bronze. *L18.849. Stolen from a botanical garden in Västeras, Sweden on April 26, 2018.

54

55. **Unknown Artist (Benin).** ***Man.*** Cast bronze. The arms have been cut off. *L18.235. Stolen from a private residence in London, England on March 1, 2016.

55

ASIAN ART

56. ***Cham Mask.*** (Tibetan). Wood. Ht: 27 cm (approx. 10 ½″). Ed. no. IV/2556 or IV/80-2556. *L18.1072. Stolen from a museum in Freiburg im Briesgau, Germany on June 25, 1993.

56

PRE-COLUMBIAN ART

57. **Unknown Artist** (Guerrero, Pre-Classic Period, 350-100 B.C.). ***Standing Figure.*** Cale-schist with green-gray biotite. 48.69 x 19.51 x 6.4 cm (approx. 19 ⅛″ x 7 ¾″ x 2 ½′). *L18.756. Stolen from the Private Art Dealers Fair in Paris, France on April 8, 2018.

57

RECOVERED ART

PAINTINGS

1

1. **VÁCLAV BROŽÍK** (Czech, 1851-1901). ***A Day at the Beach,*** c. 1883-84. 50.8 x 78.69 cm (approx. 20″ x 31″). *N85.372 Missing in the U.S. on December 15, 1984. (See IFARreports, Vol. 6, nos. 6&7, p. 15, no. 872). Recovered with the help of the ALR in March 2018.

The following two paintings by **ROBERT COMBAS** (French, born 1957), which were missing from a private residence in Geneva, Switzerland on November 25, 2016 (*L17.113; see *IFAR Journal,* Vol. 18, no. 1, p. 61, nos. 1-2), were recovered on May 15, 2018:

2

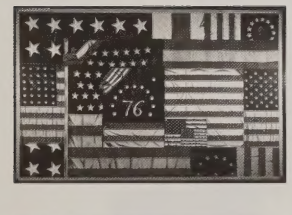
2. ***God is going to party the ass-ass clan through the Pope-King-Mage-Cheese 15,*** 1992. Oil on canvas. 27 x 16.99 cm (approx. 10 ½" x 6 ¾). Signed and dated on the edge of the canvas.

3

3. ***Lady Godiva,*** 1992. Oil on canvas. 19 xx 27 cm (approx. 7 ½″ x 10 ⅝″). Signed and dated on the edge of the canvas.

The following three paintings by **GARY THOMAS ERBE** (American, 1944), which were stolen from a private residence in East Hampton, New York on November 13, 2016 (*L17.127; see *IFAR Journal,* Vol. 18, no. 1, p. 51, nos. 17-19), were recovered on November 22, 2017:

4



4. ***Composition in Red, White and Blue,*** 1975. Oil on canvas. 182.88 x 284.48 cm (72″ x 112″).

5

5. ***Fantasy in Pursuit,*** 1978. 187.96 x 162.56 cm (74″ x 64″).

6

6. ***Trio,*** 1985. Oil on canvas. 76.2 x 93.98 cm (30″ x 37″).

7

7. **TOM MCKINLEY** (American, contemporary). ***A Very Small Penthouse,*** 2006. Oil on board. 60.96 x 93.98 cm (24″ x 37″). *L16.1032. (See *IFAR Journal,* Vol. 17, no. 4, p. 53, no. 110). Stolen from a private residence in Los Angeles, CA on September 6, 2016 and recovered on November 14, 2017.

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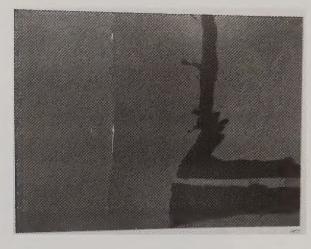
* Numbering for the Volume 19 Cumulative Index of Recovered Art begins with this issue.

RECOVERED ART

8. **ROBERT MOTHERWELL** (American, 1915-1991). ***Untitled,*** 1967. Acrylic (?) on canvas. Approx. 175.3 x 233.7 cm (69″ x 92″). Stolen in transit in NYC in 1978. Recovered in New York in 2018 by the FBI and Dedalus Foundation.



8

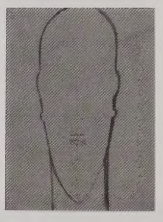
WORKS ON PAPER

The following two works on paper, which were stolen from a private residence in New York, NY on March 13, 2013 (*L13.312; see *IFAR Journal,* Vol. 14, nos. 1&2, p. 86, nos. 38 and 39), were recovered with the help of the ALR on January 6, 2016:

9. **ALBERTO GIACOMETTI** (Swiss, 1901-1966). ***Vue de l'atelier de l'artiste,*** 1949. Pen and ink on paper.

9

10. **AMEDEO MODIGLIANI** (Italian, 1884-1920). ***Study for a Sculpted Head,*** c. 1911-12. Crayon on paper. 25.4 x 20.32 cm (10″ x 8″).



10

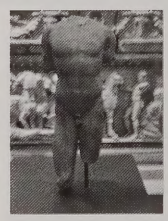
ROMAN ANTIQUITIES

The following two items were among numerous antiquities from the Sidon site in Lebanon that were stolen from a warehouse in Byblos in 1981 during the Lebanese Civil War. *L00.1210. One was identified by the ALR with a German dealer in April 2017, while the other was located with a New York private collector in November 2017. They were both repatriated to the National Museum in Beirut in February 2018, along with two others recovered in New York:

11. ***Male Torso*** (Roman, 1st-2nd century AD). Marble. Ht: 50 cm (approx. 20″).

11

12. ***Male Torso*** (Roman,1st-2nd century AD). Marble. 56 x 25 cm (approx. 22″ x 9 ¾″).



12

STOLEN ART

Paintings

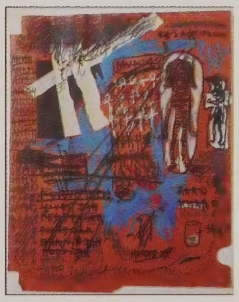
10

11

14

26

15



38

36

10. **JAMES LATHAM** (Irish, 1696-1747) ***Portrait of a Lady Holding a Rose,*** 1720. Oil on canvas. 127 x 101.7 cm (50″ x 40″. Published in the catalogue for the Christie's sale "A Knight in Ireland," May 7, 2009, Lot 34. *L18.251. Stolen from a private residence in Hamble, England on September 1, 2017.

11. **MAESTRO OF FAENZA**, Sec. XIII (Italian, 13th century). ***Crucifixion and Descent into Limbo.*** Tempera and gold leaf on panel. 35 x 28 cm (approx. 13 ¾" x 11"). *L18.531. Stolen from the Pinacoteca Comunale di Faenza in Faenza, Italy on March 1, 2018.

14. **PAUL SIGNAC** (French, 1863-1935). ***Le Port de la Rochelle,*** 1915. Oil on canvas. 46.5 x 55 cm (approx. 18 ¼" x 21 ½"). *L18.1004. Stolen from the Musée des beaux-arts, Nancy, France on May 24, 2018 when the painting was cut out of its frame. The frame was left in place.

15. **NICOLAS DE STAEL** (French, 1914-1955). ***Le Fort Carré à Antibes,*** 1955. Oil on canvas. 23.5 x 34.6 cm. *L18.1096. Discovered missing from a private collection in London, England on April 12, 2018.

26. **PETER PAUL RUBENS** (Flemish, 1577-1640). ***The Holy Family with St. Anne.*** Oil on board. 86 x 65 cm (approx. 33 ¾" x 25 ½"). *L18.697. One of two paintings stolen in a daring heist in Monza, Italy in April 2017. See also item 25 inside.

RECOVERED

Works on Paper

36. HANS HOFMANN (German/American, 1880-1966). ***Nude Study,*** 1935. Charcoal on paper. 60.96 x 48.26 cm (24″ x 19″). *L18.486. Stolen from a gallery in Anaheim, CA on November 15, 2016.

38. JEAN-MICHEL BASQUIAT (American, 1960-1988). ***Mummy,*** ca 1980s. Drawing on a heavy paper file insert. 25.5 x 31.5 cm (approx. 10″ x 12″). *L18.740. One of two works stolen in New York, NY on March 12, 2018. See also item 39 inside.

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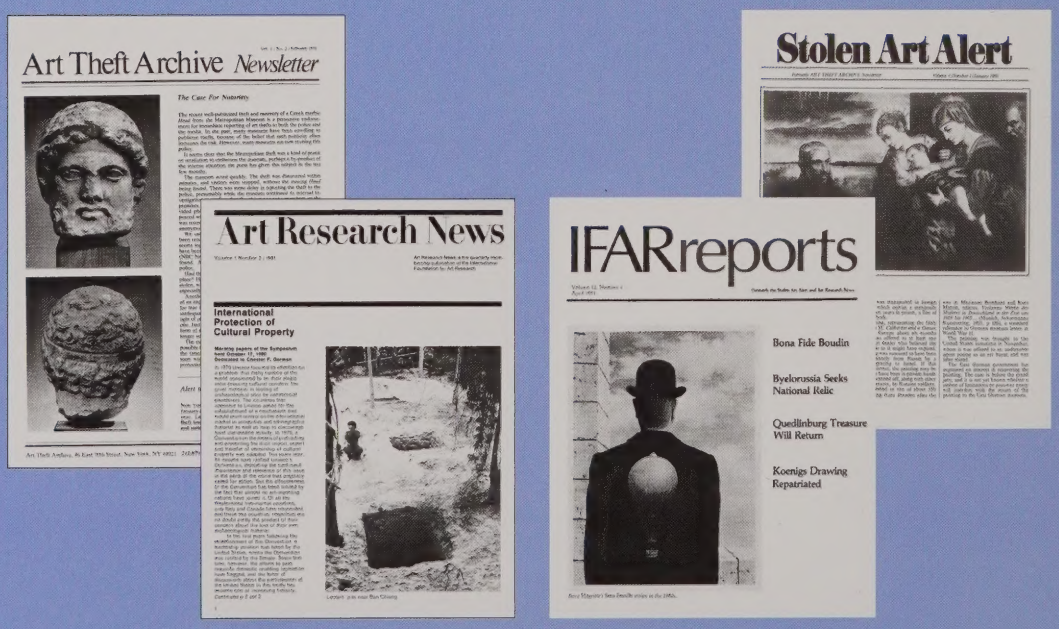
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